File Number: 41643

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

BANK OF NOVA SCOTIA

Appellant
(Appellant)

and

HIS MAJESTY THE KING

Respondent
(Respondent)

and

BUSINESS COUNCIL OF CANADA, CANADIAN CENTRE FOR TAX POLICY

Interveners

CONDENSED BOOK OF THE APPELLANT

Pursuant to Rule 45 of the *Rules of the Supreme Court of Canada* (SOR/2002-156)

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Index to the Appellant's Condensed Book

Tab	Document	Cite
13.	Canada, Department of Finance, *Technical Notes to a Notice of Ways and Means Motion Relating to Income Tax* (Ottawa: Finance, September 1985)	pp 92, 95-96 (EN) pp 97, 101 (FR)
Jurisprudence		
14.		
A.	*Alberta (Provincial Treasurer) v Methanex Corporation*, 2004 ABCA 304	para 12
B.	*Methanex Corporation v Alberta (Provincial Treasurer)*, 2003 ABQB 157	paras 29
15.	*Deans Knight Income Corp. v Canada*, 2023 SCC 16	paras 86-87
16.	*Dow Chemical Canada ULC v Canada*, 2024 SCC 23	paras 45-47
Secondary sources		
17.	Ian Crosbie, "Amended Returns, Refunds and Interest" (2012) Tax Dispute Resolution, Compliance, and Administration Conference Report (Canadian Tax Foundation)	p 27:22

Outline of Argument

Question of statutory interpretation: Does s. 161(7) impose interest from 2007-2009 (ending when Scotia incurred and reported its 2008 loss) or from 2007-2015 (ending when Scotia claimed the 2008 loss to offset the Minister's audit adjustment)?

- Turns on whether s. 161(7)(b)(ii) or (iv) sets out the latest applicable date and therefore stops interest on the deemed tax debt.

Scotia's reading: The date in s. 161(7)(b)(ii) applies. Subparagraph 161(7)(b)(iv) does not apply because the 2015 reassessment was not issued as a consequence of a request by Scotia. This reading preserves harmony of text, context and purpose.

Scotia's reading is anchored in the text.

1. A date described in s. 161(7)(b)(iv) does not occur in every case, but only where the Minister reassesses "as a consequence of" a request from the taxpayer (the **causation precondition**) [s. 161(7)(b)(iv), Tab 5D, p 52].
2. The Minister would have reassessed Scotia regardless of whether Scotia claimed its loss, and Scotia claimed its loss only in response the Minister's decision to reassess. The causation precondition is not met [*Methanex* ¶12, Tab 14A (ABCA); ¶29, Tab 14B (ABQB)].
3. The Crown and FCA read (iv) to apply every time the Minister issues a reassessment that incorporates a carryback that the taxpayer requested. This reading is not plausible:
   a. The provision would not include any causation test if that were Parliament's intent—as evidenced by the fact that none of the other subparagraphs contains causation language.
   b. Every loss must be claimed by the taxpayer [see RF ¶63], so the precondition would be meaningless if it meant only that the request caused the application of the loss.
   c. It cannot be reconciled with the French text (« et qui »), which plainly sets out two preconditions: (1) the Minister must reassess as a consequence of a taxpayer request and; (2) the reassessment must incorporate a carryback.

Scotia's reading respects context; Crown's reading ignores context and produces unreasonable consequences.

4. Taxpayers are entitled to carry losses forward from prior years and back from subsequent years and deduct them in computing taxable income to more accurately measure income over time [*Deans Knight* ¶86-87, Tab 15; s. 111(1), Tab 5B]. An appropriate interpretation does not draw irrational or arbitrary distinctions between carrybacks and carryforwards.
5. **Counterfactual**: same facts, but taxpayer had a loss in 2006 and additional income in 2008. Crown acknowledges that no interest would be payable [RF ¶86-87].
6. The scheme for loss carryforwards—and any other deduction that taxpayers are entitled to claim—disproves the propositions that ground the Crown's interpretation:
   a. *Subparagraph (b)(iv) "encourages correct and timely self-reporting" and was enacted to "incentiviz[e] compliance"* [RF ¶30, 113]—If s. 161(7) were about misreported income, Parliament would not have limited it to deductions carried *back*. Parliament would have been equally concerned about "incentivizing" taxpayers with carryforwards.
   b. *Scotia had a tax debt as a result of the audit adjustment that it "paid" only when it claimed the loss* [RF ¶1, 31(d), 37, 53, 63, 100]—If this were correct, the taxpayer with a loss

carried forward would equally have had a debt that it paid only when the loss was claimed. Once Scotia's loss became available in 2009, the two taxpayers were situated identically, and neither was using the Crown's money from 2009-2015.

7. The counterfactual illustrates the general scheme. A loss claimed reduces taxable income upon which tax can be assessed; it does not function as a payment of tax [s. 2, Tab 5A, p 38].

8. The Crown says the key distinction that warrants differential treatment of loss carrybacks is their *availability* [RF ¶86-87, 96-97]. Scotia agrees that *availability* of losses—and not the date they are claimed—defines the obligation to pay interest. Scotia should owe interest until the loss was available. It would be irrational to credit Scotia with the loss only when it makes its claim when the loss carryforward taxpayer gets credit when the loss is available.

Scotia's reading gives effect to Parliament's intent.

9. The Crown says interest is imposed to compensate for use of money [RF ¶2, 91-97]. Yet it says the amount of interest owed by Scotia, which was assessed no more tax than it had already paid, depends solely on when the Minister audited [ASF, Tab 2; T7W-C, Tab 3]. Two taxpayers in that situation would pay different amounts of interest if they were audited at different times, even though neither was using money found to be owing to the Crown.

10. Compensation for the use of money is achieved by interest until the loss is reported in 2009.

11. The purpose of subparagraph (iv) is to address the taxpayer who asks the Minister to accede to its request to **change** its tax payable outside the time limit in s. 152(6). It does not apply to a taxpayer who is entitled to claim a loss in response to a Ministerial adjustment to income.

12. The parallel refund interest rule illustrates the policy: the Crown does not pay interest to a taxpayer who makes a late request for a refund of assessed tax [s 164(5), Tab 5D, p 55].

13. Extrinsic aids demonstrate that subparagraph (iv) was directed at requests for the Minister to exercise discretion to redetermine tax liability by applying a loss, not at claims to offset adjustments in a reassessment already being made.

    a. Whether to reassess is discretionary [s 152(4), Tab 5C, p 43], but any reassessment must be correct [*Dow Chemical* ¶45-47, Tab 16]. The FCA erred on this point [¶42, Tab 4].

    b. Drafting of (iv) and Technical Notes [Tab 13] mirror Minister's description of discretionary taxpayer-initiated process, and not description of taxpayer claims in response to audit adjustments proposed by Minister [IC84-1, Tab 12 at ¶5, 9]. Technical Notes make clear the provision only applies to requests for new reassessments, not all carryback claims.

14. This understanding of legislative purpose is harmonious with text and context.

The FCA's interpretation was contrary to statutory interpretation principles.

15. FCA observed that the result in this case was "striking" [¶3, Tab 4] and "similar to a penalty" [¶50, Tab 4] and concluded that s. 161(7)(b) was ambiguous [¶37, Tab 4]. Yet it preferred the Crown's interpretation on the theory Parliament would have spoken more clearly if it had intended to avoid the punitive consequences [¶39, 50, Tab 4].

16. Parliament must not be presumed to have intended a striking, punitive consequence in the absence of express language. Subparagraph (ii) is the applicable provision and interest to 2009 satisfied Scotia's obligations.

Court File No.: 2018-834(IT)G

TAX COURT OF CANADA

BETWEEN:

THE BANK OF NOVA SCOTIA

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

AGREED STATEMENT OF FACTS

The parties to this proceeding admit, for the purpose of this proceeding only, the truth of the facts set out in this Agreed Statement of Facts. The documents in the Joint Book of Documents referred to herein are admitted both with respect to authenticity and as evidence of the truth of their contents. The parties agree that this Agreed Statement of Facts does not preclude either party from calling evidence to supplement the facts agreed to herein or to establish other facts not set out herein, it being accepted that such evidence and facts may not contradict the facts so agreed herein.

A. CRA Transfer Pricing Audit and Settlement Agreement

1. On April 27, 2007, the Appellant, The Bank of Nova Scotia (the "Bank") filed its return for the taxation year ended October 31, 2006 (the "2006 Taxation Year"). The Bank reported net income of $1,941,328,290, reported taxable income of $800,246,606, and paid such taxes as it calculated to be owing in a timely manner.

2. On April 28, 2009, the Bank filed its return for the taxation year ended October 31, 2008 (the "2008 Taxation Year"). The Bank reported a non-capital loss of $3,972,885,321 including the impact of a section 110.5 designation of $528,000,000. Subsequent reassessments issued by the Minister of National Revenue ("Minister") up to June 9, 2014 reduced the non-capital loss by $667,754,539 (from $3,972,885,321 to $3,305,130,782).

3. In 2012, the Bank became aware of the Canada Revenue Agency's ("CRA") intention to audit the operations of one of the Bank's foreign subsidiaries, in respect of, *inter alia*, the Bank's 2006, 2007, 2008, 2009 and 2010 taxation years ended on October 31 (the "Transfer Pricing Audit").

4. In 2013 and 2014, the CRA conducted the Transfer Pricing Audit.

5. Reassessments of the 2006 Taxation Year issued by the Minister up to January 6, 2014 reduced the Bank's taxable income by $1,750,567 from $800,246,606 to $798,496,039 in respect of matters unrelated to the Transfer Pricing Audit.

6. On February 12, 2015, the CRA issued a proposal letter with respect to the Transfer Pricing Audit for the 2006 Taxation Year (the "Proposal Letter").

7. Prior to the CRA issuing proposal letters for the 2007, 2008, 2009 and 2010 Taxation Years, the Bank entered into a settlement agreement with the Minister of National Revenue (the "Minister") in respect of the Transfer Pricing Audit dated March 13, 2015 (the "Settlement Agreement").

8. The Settlement Agreement provided for the Minister to reassess the Bank to include certain amounts in its income as transfer pricing adjustments in its 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014 Taxation Years. In this regard, the Settlement Agreement was to result in an increase of the Bank's Part I income for the 2006 Taxation Year of $54,916,616 (the "Transfer Pricing Adjustment").

B. 2008 Loss Carryback

9. The Bank wrote to the Minister on March 12, 2015 (the "Letter of March 12") to carry back $54,000,000 of non-capital loss that arose in the Bank's taxation year ended October 31, 2008 to its 2006 Taxation Year in order to offset the pending $54,916,616 Transfer Pricing Adjustment (the "2008 Loss Carryback"). A copy of the Letter of March 12 is found at Tab [1] of the Joint Book of Documents.

C. The Reassessment

10. On March 20, 2015, the Minister issued a notice of reassessment for the 2006 Taxation Year (the "Reassessment"). The Reassessment processed the following adjustments:

    (a) added $54,916,616 to the Bank's Part I income for the year in respect of the Transfer Pricing Adjustment, in accordance with the terms of the Settlement Agreement;

    (b) applied the 2008 Loss Carryback as a deduction to the Bank's taxable income of $54,000,000;

    (c) calculated interest using an effective date pursuant to paragraph 161(7)(b)(iv) of the *Act* of March 12, 2015; and

    (d) assessed arrears interest of $7,931,087.49 and a return of refund interest previously paid to the Bank of $180,323.87, both based on an effective interest date of March 12, 2015.

11. A copy of the T7W-C is found at Tab [2] of the Joint Book of Documents.

Dated at the City of Edmonton, Alberta this 16th day of September, 2020.

ATTORNEY GENERAL OF CANADA

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Per: Chang Du
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Counsel for the Respondent

Dated at Calgary, Alberta this 27th day of August, 2020.

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Canada Revenue Agency | Agence du revenu du Canada

T7W-C
Rev. 95

Account Number
Numéro de compte
10519 5598 RC0001

The Bank of Nova Scotia
Executive Offices Taxation
44 King Street West
Toronto, ON M5H 1H1

Attn: J. Witzel, Senior Vice President Global Taxation

Taxation Office	TORONTO NORTH-BARRIE
Taxation year Anneé d'imposition **October 31, 2006**	Your Notice of Re-Assessment is: Votre avis de nouvelle cotisation: Enclosed / Est ci-joint: [ ] Being Mailed / Vous est expédié par la poste: [X]

YOUR INCOME TAX RETURN FOR THE TAXATION YEAR INDICATED ABOVE HAS BEEN RE-ASSESSED. THE FOLLOWING IS AN EXPLANATION OF THE CHANGE(S) MADE:

VOTRE DÉCLARATION D'IMPÔT POUR L'ANNÉE D'IMPOSITION SUSINDIQUÉE A FAIT L'OBJET D'UNE NOUVELLE COTISATION. VOUS TROUVEREZ CI-APRÈS LES EXPLICATIONS CONCERNANT LE OU LES CHANGEMENTS EFFECTUÉS:

Previous Net Income	$1,939,577,723
Add:	
Transfer pricing adjustment - reinsurance	54,916,616
Revised Net Income	$1,994,494,339
Deduct: Taxable Dividends under sections 112, 113, 138(6) previously assessed	(1,118,556,189)
Charitable donations previously assessed	(22,525,495)
Non-capital losses subsequent year	(54,000,000)
Revised Taxable Income	$ 799,412,655

Federal Court of Appeal | Cour d'appel fédérale

Date: 20241121

Docket: A-321-21

Citation: 2024 FCA 192

CORAM: **WOODS J.A.**
LASKIN J.A.
MONAGHAN J.A.

BETWEEN:

THE BANK OF NOVA SCOTIA

Appellant

and

HIS MAJESTY THE KING

Respondent

REASONS FOR JUDGMENT

WOODS J.A.

Introduction

[1] The Bank of Nova Scotia appeals to this Court from a decision of the Tax Court of Canada which confirmed a reassessment imposing interest for late payment of tax (the Decision, *per* Justice Wong, cited as 2021 TCC 70). The Bank's appeal concerns the calculation of interest

in circumstances where a reassessment has taken into account an audit adjustment and an offsetting loss carryback.

[2] In 2015, the Bank received a notice of reassessment for its 2006 taxation year, resulting in a small increase in tax. In making the reassessment, the Minister of National Revenue (the Minister) implemented an approximately $55 million audit adjustment, raising the Bank's 2006 income, and also took into account a loss carryback of $54 million, reflecting a 2008 non-capital loss. As a result, the reassessment increased the Bank's taxable income by about $1 million, and increased tax accordingly.

[3] Strikingly, the Minister also imposed interest resulting from the reassessment in the amount of $7,931,087.49. While interest on late payment of tax is generally calculated on the amount of tax owing (i.e., tax on $1 million in this case), a special provision applies if a loss carryback or other specified deduction has been taken: *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA), s. 161(7). This provision requires that, for a specified period of time, interest is calculated by ignoring the loss carryback or other specified deduction. In this case, that means rather than calculating interest on tax imposed on $1 million as assessed, interest for a period of time is calculated on a notional amount of tax that would be payable if the loss carryback were ignored and the Bank's taxable income were $55 million instead.

[4] While the parties agree that subsection 161(7) of the ITA must be applied in this case, they disagree as to the period to which it applies. The Tax Court concluded that the loss carryback should be ignored for approximately eight years. The Bank appeals this decision,

arguing that the carryback should be ignored for only two years. As I will explain, I would dismiss the appeal.

Background

[5] The background facts are set out in the parties' agreed statement of facts, which reads in relevant part:

> **A. CRA Transfer Pricing Audit and Settlement Agreement**
>
> 1. On April 27, 2007, the Appellant, The Bank of Nova Scotia (the "Bank") filed its return for the taxation year ended October 31, 2006 (the "2006 Taxation Year"). The Bank reported net income of $1,941,328,290, reported taxable income of $800,246,606, and paid such taxes as it calculated to be owing in a timely manner.
>
> 2. On April 28, 2009, the Bank filed its return for the taxation year ended October 31, 2008 (the "2008 Taxation Year"). The Bank reported a non-capital loss of $3,972,885,321 including the impact of a section 110.5 designation of $528,000,000. Subsequent reassessments issued by the Minister of National Revenue ("Minister") up to June 9, 2014 reduced the non-capital loss by $667,754,539 (from $3,972,885,321 to $3,305,130,782).
>
> 3. In 2012, the Bank became aware of the Canada Revenue Agency's ("CRA") intention to audit the operations of one of the Bank's foreign subsidiaries, in respect of, *inter alia*, the Bank's 2006, 2007, 2008, 2009 and 2010 taxation years ended on October 31 (the "Transfer Pricing Audit").
>
> …
>
> 6. On February 12, 2015, the CRA issued a proposal letter with respect to the Transfer Pricing Audit for the 2006 Taxation Year (the "Proposal Letter").
>
> 7. Prior to the CRA issuing proposal letters for the 2007, 2008, 2009 and 2010 Taxation Years, the Bank entered into a settlement agreement with the Minister of National Revenue (the "Minister") in respect of the Transfer Pricing Audit dated March 13, 2015 (the "Settlement Agreement").

8. The Settlement Agreement provided for the Minister to reassess the Bank to include certain amounts in its income as transfer pricing adjustments in its 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014 Taxation Years. In this regard, the Settlement Agreement was to result in an increase of the Bank's Part I income for the 2006 Taxation Year of $54,916,616 (the "Transfer Pricing Adjustment").

B. 2008 Loss Carryback

9. The Bank wrote to the Minister on March 12, 2015 (the "Letter of March 12") to carry back $54,000,000 of non-capital loss that arose in the Bank's taxation year ended October 31, 2008 to its 2006 Taxation Year in order to offset the pending $54,916,616 Transfer Pricing Adjustment (the "2008 Loss Carryback"). …

C. The Reassessment

10. On March 20, 2015, the Minister issued a notice of reassessment for the 2006 Taxation Year (the "Reassessment"). The Reassessment processed the following adjustments:

> (a) added $54,916,616 to the Bank's Part I income for the year in respect of the Transfer Pricing Adjustment, in accordance with the terms of the Settlement Agreement;
>
> (b) applied the 2008 Loss Carryback as a deduction to the Bank's taxable income of $54,000,000;
>
> (c) calculated interest using an effective date pursuant to paragraph 161(7)(b)(iv) of the *Act* of March 12, 2015; and
>
> (d) assessed arrears interest of $7,931,087.49 … based on an effective interest date of March 12, 2015.

…

[6] For clarity, the Bank's "Letter of March 12" referred to in paragraph 9 of the agreed statement of facts provides in relevant part: "As a consequence of the Canada Revenue Agency's

pending reassessment of the Bank to increase its income …, the Bank hereby requests a carryback …".

Applicable legislation

[7] As a general rule, interest on tax balances is based on the unpaid taxes payable for a given taxation year (ITA, s. 161(1)). The calculation period begins on the taxpayer's "balance-due day", as defined, and ends when the tax is fully paid. The "balance-due day" is a specified day which is generally not long after the end of the relevant taxation year (ITA, s. 248(1)).

[8] The current version of subsection 161(1) is set out below. It includes more recent amendments, but these are not material.

161 (1) Where at any time after a taxpayer's balance-due day for a taxation year	**161 (1)** Dans le cas où le total visé à l'alinéa a) excède le total visé à l'alinéa b) à un moment postérieur à la date d'exigibilité du solde qui est applicable à un contribuable pour une année d'imposition, le contribuable est tenu de verser au receveur général des intérêts sur l'excédent, calculés au taux prescrit pour la période au cours de laquelle cet excédent est impayé :
(a) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI, VI.1 and VI.2 (determined in accordance with subsection 191.5(9)) for the year	**a)** le total des impôts payables par le contribuable pour l'année en vertu de la présente partie et des parties I.3, VI, VI.1 et VI.2 (calculé conformément au paragraphe 191.5(9));
exceeds	

(b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI, VI.1 or VI.2 for the year,	**b)** le total des montants représentant chacun un montant payé au plus tard à ce moment au titre de l'impôt payable par le contribuable et imputé par le ministre, à compter de ce moment, sur le montant dont le contribuable est redevable pour l'année en vertu de la présente partie ou des parties I.3, VI, VI.1 ou VI.2.
the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.	

[9] The term "tax payable" is defined by subsection 248(2) of the ITA as the tax fixed by assessment or reassessment, subject to variation on objection or appeal:

248 (2) In this Act, the tax payable by a taxpayer under any Part of this Act by or under which provision is made for the assessment of tax means the tax payable by the taxpayer as fixed by assessment or reassessment subject to variation on objection or on appeal, if any, in accordance with the provisions of that Part.	**248 (2)** Dans la présente loi, l'impôt payable par un contribuable, conformément à toute partie de la présente loi prévoyant une imposition, désigne l'impôt payable par lui, tel que le fixe une cotisation ou nouvelle cotisation, sous réserve éventuellement de changement consécutif à une opposition ou à un appel, d'après les dispositions de cette partie.

[10] The rate of interest, set by regulation, is generally the Government of Canada three month Treasury Bill rate plus four percent. The rate is determined quarterly, and compounded daily. (See *Income Tax Regulations*, C.R.C., c. 945, ss. 4300-4301; ITA, s. 248(11).)

[11] The general rule is modified by subsection 161(7) of the ITA, which applies if specified deductions or exclusions have been carried back to the relevant taxation year. One such deduction is a loss carryback that has been deducted pursuant to section 111 of the ITA (s. 161(7)(a)(iv)).

[12] If the modified rule in subsection 161(7) applies, interest is computed until a specified date as if the deduction or exclusion was not applied (s. 161(7)(a)). Effectively, the deduction or exclusion is ignored for this period of time. When the period of time ends, interest is calculated thereafter under the general rule, which takes the deduction or exclusion into account.

[13] The modified rule ceases to apply 30 days after the latest of four end dates listed in subparagraphs 161(7)(b)(i)-(iv). Where the relevant deduction is a loss carryback, the first two end dates, listed in subparagraphs (i) and (ii), are days that are shortly after the end of the loss year. The remaining two end dates, listed in subparagraphs (iii) and (iv), are days on which the loss carryback is requested.

[14] The current version of subsection 161(7), which is not materially changed from the relevant taxation year, is set out in part below.

161 (7) For the purpose of computing interest under subsection 161(1) or 161(2) on tax or a part of an instalment of tax for a taxation year, and for the purpose of section 163.1,	**161 (7)** Pour le calcul des intérêts à verser en application des paragraphes (1) ou (2) sur l'impôt ou sur une partie d'un acompte provisionnel pour une année d'imposition et pour l'application de l'article 163.1:
(a) the tax payable under this Part and Parts I.3, VI and VI.1 by the	**a)** l'impôt payable par le contribuable pour l'année en vertu

taxpayer for the year is deemed to be the amount that it would be if the consequences of the deduction, reduction or exclusion of the following amounts were not taken into consideration:

de la présente partie et des parties I.3, VI et VI.1 est réputé être égal à la somme qui serait payable à ce titre si les conséquences de la déduction, de la réduction ou de l'exclusion des montants ci-après n'étaient pas prises en compte :

…

…

(iv) any amount deducted under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(iv) un montant déduit, en application de l'article 118.1, à l'égard d'un don fait au cours d'une année d'imposition ultérieure ou, en application de l'article 111, à l'égard d'une perte subie pour une année d'imposition ultérieure,

…

…

and

(b) the amount by which the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is reduced as a consequence of the deduction or exclusion of amounts described in paragraph (a) is deemed to have been paid on account of the taxpayer's tax payable under this Part for the year on the day that is 30 days after the latest of

b) la somme qui est appliquée en réduction de l'impôt payable par le contribuable pour l'année en vertu de la présente partie et des parties I.3, VI et VI.1 par suite de la déduction ou de l'exclusion de montants visés à l'alinéa a) est réputée avoir été versée au titre de son impôt payable pour l'année en vertu de la présente partie le trentième jour suivant le dernier en date des jours suivants :

(i) the first day immediately following that subsequent taxation year,

(i) le premier jour qui suit cette année d'imposition ultérieure,

(ii) the day on which the taxpayer's or the taxpayer's legal representative's return of

(ii) le jour où la déclaration de revenu du contribuable ou de son représentant légal pour

income for that subsequent taxation year was filed,	cette année d'imposition ultérieure a été produite,
(iii) if an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed under subsection 49(4) or 152(6) or (6.1) or paragraph 164(6)(e), the day on which the amended return or prescribed form was filed, and	**(iii)** le jour où une déclaration de revenu modifiée du contribuable pour l'année a été produite ou un formulaire prescrit modifiant sa déclaration de revenu pour l'année a été présenté conformément au paragraphe 49(4) ou 152(6) ou (6.1) ou à l'alinéa 164(6)e), dans le cas où il y a une telle production ou présentation,
(iv) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.	**(iv)** le jour de la demande écrite à la suite de laquelle le ministre établit une nouvelle cotisation concernant l'impôt du contribuable pour l'année et qui tient compte de la déduction ou de l'exclusion, dans le cas où il y a une telle nouvelle cotisation.

[15] A loss carryback rule similar to subsection 161(7) was first enacted approximately 70 years ago (*Income Tax Act*, R.S.C. 1952, c. 148, s. 54(8)). According to the Senate debates from that time, the objective of this legislation was to discourage taxpayers from deciding not to pay tax that was reported because they anticipated having a subsequent loss that could be carried back to offset the income (*Debates of the Senate*, 22nd Parl., 1st Sess., vol. 1 (10 June 1954) at 594 (Hon. Salter Hayden)). Under the original provision, the interest calculation ignored a loss carryback until the end of the loss year. This is similar to subparagraph 161(7)(b)(i) in the current legislation.

[16] This appeal concerns a significant change made to subsection 161(7) in 1985. Notably, Parliament added the provision that is at issue in this appeal, subparagraph 161(7)(b)(iv).

Tax Court Decision

[17] The Tax Court considered whether the Minister was correct to apply subparagraph 161(7)(b)(iv). The Minister's calculation ignored the loss carryback until 2015 when the Minister's proposed transfer pricing reassessment prompted the Bank to request that its 2008 non-capital loss be carried back. If the Minister incorrectly concluded that subparagraph (b)(iv) applied, then subparagraph (b)(ii) would apply and the loss carryback restriction would end in 2009 when the Bank's return of income for the loss year was filed.

[18] The Bank submitted in the Tax Court that Parliament did not intend for a taxpayer to be subject to interest when a taxpayer has a loss carryback available but is unaware that it could be used until the audit is completed. The Bank noted that other discretionary deductions under the ITA are not subject to such restriction. The Bank also submitted that the text of subparagraph 161(7)(b)(iv) does not support the reassessment because it requires that the Minister reassess as a consequence of the carryback request. The Minister did not reassess for this reason, the Bank suggested, but to process the audit adjustment.

[19] The Tax Court rejected these submissions, primarily on the basis that the Bank's position was not supported by the unambiguous text of subparagraph (b)(iv), including the English and French versions (Decision at para. 31). The Court also found support in subsection 152(3) of the

ITA, which provides that liability for tax is not affected by an incorrect or incomplete assessment (Decision at para. 20).

The parties' positions

[20] In this Court, the Bank reiterates its Tax Court position that subparagraph 161(7)(b)(iv) is inapplicable because the reassessment was not made as a result of the carryback request. The Bank submits that this interpretation is consistent with the text, context, and purpose of subparagraph 161(7)(b)(iv).

[21] The Crown submits that the Decision is consistent with the clear wording of subparagraph (b)(iv), which is unambiguous. This, the Crown argues, is further supported by the fact that the Minister cannot apply a loss carryback unless the taxpayer requests it. The Crown says that subparagraph 161(7)(b)(iv) reflects this reality.

Analysis

Overview

[22] The Bank describes this appeal as concerning the time at which the "interest clock" stops running when tax arrears are offset by a loss carryback. In the present case, the question is whether interest with respect to the Bank's 2006 tax arrears stops running in 2009 when the tax return for the loss year was filed, or whether it stops in 2015 when the Bank requested the

carryback. The difference between these dates is significant. If interest stops running when the carryback was requested, an additional six years of interest will be imposed, from 2009 to 2015.

[23] The provision the Tax Court determined applicable, subparagraph 161(7)(b)(iv), applies only if, as a consequence of the Bank's request, the Minister reassesses to take the loss carryback into account. The issue before the Tax Court and this Court centres on the proper interpretation of this proviso.

Standard of review, principles of statutory interpretation, and scope

[24] The question to be decided is purely a matter of statutory interpretation. The standard of review is correctness, and no deference is to be given to the Decision (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at para. 8).

[25] As for the applicable principles of statutory interpretation, these were concisely described by the Supreme Court of Canada in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 [*Canada Trustco*]:

> 10 It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose

> on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.
>
> [Emphasis added.]

[26] *Canada Trustco* also clarified that "[e]ven where the meaning of particular provisions may not appear to be ambiguous at first glance, statutory context and purpose may reveal or resolve latent ambiguities" (at para. 47). As a result, a textual, contextual and purposive analysis is usually required.

[27] Finally, a note on the scope of the analysis. Although the carryback rule in subsection 161(7) applies to several types of deductions and exclusions, I will focus only on carrybacks of losses. The other types of deductions and exclusions specified in subsection 161(7) were not addressed by the parties, and I assume they would not affect the analysis.

Textual analysis

[28] The carryback rule in subsection 161(7) is an exception to the general calculation of interest for late payment of tax set out in subsection 161(1) of the ITA. As described above, the general rule provides that interest starts running from the balance-due day for the relevant taxation year and ends when the outstanding balance is fully paid. The balance at a particular time is calculated as the taxes payable for the year less the taxes that have been paid. The taxes payable for a year generally mean taxes assessed or reassessed (ITA, s. 248(2)).

[29] Subsection 161(7) applies where a loss carryback has been deducted for a taxation year. Where it applies, interest is calculated in the same manner as in the general rule set out in

subsection 161(1), except that the calculation ignores the loss carryback until a day specified in paragraph 161(7)(b). The specified day is 30 days after the latest of four dates.

[30] The issue in this case is whether subparagraph (b)(iv) applies. If it does not apply, the applicable provision is subparagraph (b)(ii). Subparagraph (b)(iv) reads in part:

(iv) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.	**(iv)** le jour de la demande écrite à la suite de laquelle le ministre établit une nouvelle cotisation concernant l'impôt du contribuable pour l'année et qui tient compte de la déduction ou de l'exclusion, dans le cas où il y a une telle nouvelle cotisation.

[31] This appeal centres on the proper interpretation of the proviso, above. In English, the focus is on the words: "as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion." Two questions are raised. First, does the proviso contain a causal element, or is it merely temporal? Second, if there is a causal element, how is it to be applied? To answer these questions, both official versions need to be considered.

[32] As for the first question, in my view both the English and French versions of the proviso imply a causal element. Beginning with the English, the phrase "as a consequence of" clearly imports a causal element.

[33] Similarly, the French version has a causal element by virtue of the corresponding phrase "à la suite de laquelle", which can be translated as "by reason of" (*Le Petit Robert de la langue*

française (Paris: Dictionnaires Le Robert, 2022)). I note that the Tax Court found the French version to mean "following which", a translation that lacks a clear causal connotation (Decision at para. 24). Although "following which" is an accepted translation in French dictionaries, the French phrase also has the broader meaning of "by reason of", as mentioned.

[34] The proper approach is to determine, if possible, a meaning which is shared between the English and French versions (*R. v. S.A.C.*, 2008 SCC 47, [2008] 2 S.C.R. 675 at paras. 14-16). In the phrase at issue, the causal element reflects the shared meaning, and it is the meaning to be adopted.

[35] The parties agree that subparagraph (b)(iv) encompasses a causal aspect. However, they disagree on the second question above which asks how the causal element is applied. The Bank submits that the causal element was intended to exclude the present circumstances because the 2015 reassessment was not made as a consequence of its carryback request. Rather, the reassessment was made in order to process the audit adjustment.

[36] In contrast, the Crown suggests that the causal element is satisfied because the Minister did not implement the loss carryback of her own accord, but took the carryback into account as a result of the Bank's request. The text is clear and the Minister is not able to process a loss carryback without a request from the taxpayer. It was, therefore, the Bank's request, regardless of the motive behind it, that triggered the Minister's application of the loss carryback, satisfying the proviso in subparagraph (b)(iv).

[37] In my view, the parties' disagreement stems in part from the text not being as clear as it could be. The causal element is clearly satisfied if the reassessment only addresses the carryback request. This is because in such circumstances it is obvious that the request, and no other cause, has led the Minister to reassess to implement the loss carryback. However, it is less clear that the proviso is satisfied if the Minister reassesses to make other adjustments as well, as in this case. I conclude that the text, read in isolation, is ambiguous; accordingly, contextual and purposive factors should be considered.

Contextual and purposive analysis

[38] The Bank submits that contextual and purposive factors support its position. The general thrust of its submissions is that it is implausible that Parliament intended such a harsh result as to impose interest during a period that a taxpayer had a loss carryback available but had not yet claimed the carryback because it did not know the results of the Minister's audit.

(a) Lack of specificity

[39] I would mention first a contextual factor that is strongly against the Bank's position. It is well established that Parliament seeks certainty, predictability and fairness in tax legislation (*Canada Trustco* at para. 61). If Parliament did not intend to impose interest when a loss carryback is claimed as a result of an audit adjustment, it is likely that Parliament would have provided for this with explicit language. But the language used is not explicit and does not reference audit adjustments at all. The Bank's position is problematic for this reason.

(b) Technical note

[40] Second, the Bank suggests that its position is supported by the relevant Department of Finance technical note that accompanied the enactment of the legislative provision at issue. The note explains that subparagraph (b)(iv) applies if "the Minister of National Revenue later accedes to the taxpayer's written request to reassess the earlier year": Canada, Minister of Finance, *Technical Notes to a Notice of Ways and Means Motion Relating to Income Tax*, (Ottawa: Department of Finance, 9 September 1985) at 92 [emphasis added].

[41] According to the Bank, the use of the term "accedes" in the technical note reinforces that subparagraph (b)(iv) does not apply where the Minister proposes to reassess for her own reasons (i.e., an audit adjustment). The argument is that the Minister has no ability to refuse the carryback request in these circumstances because a taxpayer has a statutory right to claim a loss carryback by virtue of paragraph 111(1)(a). However, where the Minister does not propose to reassess for her own reasons, the Bank submits that the term "accedes" is appropriate because a taxpayer generally does not have the right to require the Minister to reassess after an original assessment that follows the filing of the return. In those circumstances, the Minister has the discretion not to accede to a carryback request if this would require a new reassessment. The Bank suggests, therefore, that the use of the term "accedes" in the technical note supports its position.

[42] I disagree with this argument. The Minister has the right to reject a taxpayer's request for a loss carryback. The point was made in *Greene v. Minister of National Revenue* (1995), 95

D.T.C. 5684, 1995 CarswellNat 1841 (F.C. App. Div.) that the Minister only has to consider a request, not necessarily issue a reassessment granting the request.

[43] Indeed, read alongside the legislation, it becomes clear that the essence of the technical note is that subparagraph (b)(iv) applies if the Minister reassesses to accede to the taxpayer's request for a loss carryback. This favours the Crown's position.

(c) Anomalous consequences

[44] It is also worth noting that the Bank's position appears to lead to potentially anomalous results. A hypothetical example given by the Crown in the Tax Court involved a situation in which the Minister implements the audit adjustment and the loss carryback in two separate reassessments rather than one (as occurred in this case). This example appears to lead to different interest calculations if the interpretation suggested by the Bank is accepted: the single reassessment scenario would see the "interest clock" stop when the return for the loss year was filed, but the two reassessment scenario would see the "interest clock" continue until the loss carryback was requested, potentially many years later. There is no principled reason why the issuance of one or two reassessments should lead to diverse outcomes and I agree with the Crown that Parliament likely did not intend this result.

[45] The Bank responds to this argument in a couple of ways. First, it suggests that interest is calculated in the same manner regardless of whether there are one or two reassessments because all the reassessments stem from the audit adjustment. In effect, the Bank suggests that Parliament

envisaged that there would be an inquiry as to the ultimate cause of a reassessment. In my view, this interpretation is highly unlikely as it brings more uncertainty into the application of subparagraph (b)(iv). If anything, this argument illustrates a weakness with the Bank's position.

[46] Second, the Bank briefly submitted in oral argument that the hypothetical example may be an unlikely scenario because a separate reassessment could be statute barred. This argument was not fully fleshed out and was too brief to merit a considered response. In any event, even if unlikely, the possibility of anomalous results is a factor weighing against the Bank's interpretation.

[47] In sum, the hypothetical example illustrates that the Bank's suggested interpretation may well give rise to anomalous results. In my view, this is another strong factor in favour of the Crown's position.

(d) Punitive aspect

[48] The Bank submits that the Crown's position does not reflect Parliament's intent because it flies in the face of the general theory of interest, which is to compensate for the use of funds. The result is harsh, the Bank suggests, because it did not have use of the funds once the loss was incurred. Put another way, the Bank suggests that the Crown's position results in a penalty being imposed, which is not the purpose of the interest provisions. The Bank also suggests that Parliament recognizes that the ITA is complex, and there can be differences of opinion that reflect honestly held views.

[49] The Bank's argument that the Crown's position ascribes a punitive aspect to subparagraph (b)(iv) appears to be reinforced by the Crown's written submissions in this appeal which underscore the tax avoidance element of the provision: "The Minister's audit power is an essential tool that works in addition to self-reporting, to prevent taxpayers from avoiding their full share of taxes. … The fact that [the Bank's] income was detected through an audit instead of having been reported is no reason to relieve [it] from the effect of subparagraph 161(7)(b)(iv)."

[50] However, contrary to the Bank's argument, Parliament must have been aware that a loss carryback might well be requested as a result of an audit adjustment. I agree with the Crown that this scenario is not obscure. It is, therefore, likely that Parliament knew that subparagraph (b)(iv) could function in a manner similar to a penalty. It is also likely that Parliament knew that substantial interest could accrue under subparagraph (b)(iv) if the carryback request resulted from an audit. Despite the Bank's forceful arguments, I conclude there is no reason to think that Parliament did not intend this result. Had Parliament wished to avoid this outcome, it would have spoken more clearly.

(e) Lack of harmony

[51] The Bank suggests that the Tax Court decision results in similarly-situated taxpayers being treated differently. It explains that "where taxpayers have discretionary deductions other than loss carrybacks available and claim those discretionary deductions to offset audit adjustments, the Act does not impose interest. … It is difficult to imagine that Parliament would treat such similarly situated taxpayers so differently." In support, the Bank cites a technical

interpretation letter of the Canada Revenue Agency dated May 11, 2023 (No. 2022-093670), and an article by Ian Crosbie, “Amended Returns, Refunds, and Interest” (2012) *Tax Dispute Resolution, Compliance, and Administration Conference Report* (Canadian Tax Foundation) 27:1 at 27:22.

[52] I am not satisfied that these authorities support the broad principle stated by the Bank. With respect to loss carryforwards in particular, typically the authorities above cite administrative positions on facts that are materially different from those in this appeal. Often, the facts involve a taxpayer that reports a capital gain and applies a deduction to offset it. After an audit, the capital gain is changed to income, and the taxpayer then substitutes the previous offsetting deduction with a non-capital loss carryforward. The Canada Revenue Agency position is that arrears interest is not imposed in these circumstances. The facts in the present case are quite different in that nothing was originally reported by the Bank.

[53] Although the Bank may have overstated the administrative position, I acknowledge the Crown’s position may result in different treatment between loss carrybacks and certain other deductions such as loss carryforwards. I also acknowledge that the Court must presume that Parliament intended the ITA to work as a harmonious scheme. However, the provisions of the ITA work against that presumption and suggest that Parliament did not intend a harmonious scheme for the calculation of interest in these circumstances. For example, Parliament enacted a specific provision dealing with loss carrybacks, and it chose not to adopt an analogous provision for loss carryforwards. There could be many reasons for this, and there is no point in speculating

why this is so. It certainly was Parliament's prerogative to treat other types of deductions more favourably.

(f) 1954 Senate debates

[54] The Bank also submits that its suggested interpretation satisfies the purpose of subsection 161(7). Noting the Senate debates from 1954 referred to above, the Bank suggests that subsection 161(7) was enacted to discourage taxpayers from ignoring an obligation to pay tax in anticipation that they will incur a loss in a subsequent year that could be carried back. The Bank suggests that its interpretation satisfies this objective because it requires the Bank to pay interest for the two-year period before the loss was incurred.

[55] In my view, this general comment from the Senate debates in 1954, which concerns a different legislative provision, is not instructive as to Parliament's intent in enacting subparagraph (b)(iv) 30 years later.

[56] Accordingly, for all the reasons above, the contextual and purposive factors are overwhelmingly in favour of the Crown's position.

Judicial authorities

[57] This section considers two judicial decisions relied on by the parties: *Connaught Laboratories Ltd. v. Canada* (1994), 94 D.T.C. 6697, [1995] 1 C.T.C. 216 (F.C.T.D.)

[*Connaught*] and *Alberta (Provincial Treasurer) v. Methanex Corporation*, 2004 ABCA 304 [*Methanex*]. The Tax Court concluded that the present case is "more akin" to *Connaught* than *Methanex* (Decision at para. 26).

[58] The Crown relies on *Connaught*. In that case, the Federal Court – Trial Division considered whether interest was determined under the carryback rule as it read prior to the introduction of s. 161(7)(b)(iv) in 1985. The Court determined that the carryback rule applied. Factually, *Connaught* is similar to this case. The Minister reassessed Connaught Laboratories in 1985 to include an unreported capital gain in income for its 1981 taxation year. The same reassessment included a carryback of a 1982 capital loss to 1981.

[59] Connaught Laboratories argued that the carryback rule did not apply because the taxpayer had other deductions that it could have used instead of the carryback. However, citing the well-established principle that tax is determined by what a taxpayer does, and not what it could have done, the Court rejected this argument and confirmed the reassessment. The result was that interest was calculated in accordance with subsection 161(7), as it then read.

[60] The Court in *Connaught* commented that subsection 161(7) was unambiguous and the Minister's interpretation did not offend the purpose or objectives of the ITA. The Crown suggests that these comments are helpful in the present case. I do not agree because the provision at issue in this appeal is not at all similar to the relevant provision in *Connaught*. The decision is simply not relevant.

[61] The *Methanex* decision is relied upon by the Bank. The Tax Court concluded that *Methanex* is either distinguishable or wrongly decided (Decision at para. 29).

[62] *Methanex* concerned a provision in a provincial taxation statute that is equivalent to subparagraph 161(7)(b)(iv) of the ITA: *Alberta Corporate Income Tax Act*, R.S.A. 1980, c. A-17, s. 39(3)(b)(iv).

[63] In 1994, the federal government reassessed Methanex Corporation for its 1988 taxation year to reclassify a capital gain as income. Methanex Corporation reduced the resulting tax by carrying back losses. Corresponding reassessments were made for Alberta tax purposes. The question was whether the Alberta equivalent of subparagraph 161(7)(b)(iv) of the ITA applied in computing Methanex Corporation's liability for interest on its Alberta tax liability.

[64] In a decision from the bench, the Court of Appeal for Alberta concluded that the chambers judge did not err by finding that the provincial equivalent of subparagraph 161(7)(b)(iv) did not apply. The basis for the Court of Appeal's decision is set out at paragraph 16 of its reasons:

> [16] The chambers judge determined that a verbal request had been made for the third reassessment (by that time the section had been amended to remove the requirement for a request in writing). He concluded the reassessment was brought about partly because of that request, but also because a Notice of Objection filed by Methanex remained outstanding and the Provincial Treasurer was required, under s. 48(4)(b) of the *Act*, to reconsider the disputed amount: at para. 28-29. The chambers judge understood that "the defining feature" for determining whether s. 39(3)(b)(iv) applied was "what ultimately caused the reassessment to occur": *id*. We conclude that he was not satisfied the requisite strong causal connection existed between Methanex's request and the reassessment. Given the

> Provincial Treasurer's statutory obligation to reconsider under s. 48(4)(b), we do not disagree.
>
> [Emphasis added.]

[65] In *Methanex*, the issue the Alberta Court of Appeal was grappling with was what caused the loss carryback to be applied. It found that there were not sufficient facts to conclude that it was the taxpayer's request. Accordingly, the decision was specific to the facts and arguments in that case and is distinguishable for that reason.

[66] In my view, neither *Connaught* nor *Methanex* is relevant.

Conclusion and disposition

[67] In light of the factors considered above, I conclude that the Crown's position is to be preferred. While the text connotes both a temporal and causal element, the text leaves the application of the causal element ambiguous. The context and purpose, however, strongly favour the Crown's position. In my view, the Tax Court did not err in dismissing the Bank's appeal.

[68] I would dismiss this appeal with costs.

"Judith Woods"
J.A.

"I agree.
J.B. Laskin J.A."

"I agree.
K. A. Siobhan Monaghan J.A."

***Income Tax Act*, RSC 1985, 5th Supp, as of October 1, 2006**

Tax payable by persons resident in Canada **2(1)** An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year. **Taxable income** **(2)** The taxable income of a taxpayer for a taxation year is the taxpayer's income for the year plus the additions and minus the deductions permitted by Division C.	**Impôt payable par les personnes résidant au Canada** **2(1)** Un impôt sur le revenu doit être payé, ainsi qu'il est prévu par la présente loi, pour chaque année d'imposition, sur le revenu imposable de toute personne résidant au Canada à un moment donné au cours de l'année. **Revenu imposable** **(2)** Le revenu imposable d'un contribuable pour une année d'imposition est son revenu pour l'année plus les ajouts prévus à la section C et moins les déductions qui y sont permises.

Tax payable **248(2)** In this Act, the tax payable by a taxpayer under any Part of this Act by or under which provision is made for the assessment of tax means the tax payable by the taxpayer as fixed by assessment or reassessment subject to variation on objection or on appeal, if any, in accordance with the provisions of that Part.	**Sens de *impôt payable*** **248(2)** Dans la présente loi, l'impôt payable par un contribuable, conformément à toute partie de la présente loi prévoyant une imposition, désigne l'impôt payable par lui, tel que le fixe une cotisation ou nouvelle cotisation, sous réserve éventuellement de changement consécutif à une opposition ou à un appel, d'après les dispositions de cette partie.

Losses deductible **111 (1)** For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted such portion as the taxpayer may claim of the taxpayer's **Non-capital losses** **(a)** non-capital losses for the 20 taxation years immediately preceding and the 3 taxation years immediately following the year; **Net capital losses** **(b)** net capital losses for taxation years preceding and the three taxation years immediately following the year; […]	**Pertes déductibles** **111 (1)** Pour le calcul du revenu imposable d'un contribuable pour une année d'imposition, peuvent être déduites les sommes appropriées suivantes : **Pertes autres que des pertes en capital** **a)** ses pertes autres que des pertes en capital subies au cours des 20 années d'imposition précédentes et des 3 années d'imposition suivantes; **Pertes en capital nettes** **b)** les pertes en capital nettes que le contribuable subit pour les années d'imposition qui précèdent et pour les trois années d'imposition qui suivent l'année; […]

Assessment	**Cotisation**
152 (1) The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine **(a)** the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year; or **(b)** the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.	**152 (1)** Le ministre, avec diligence, examine la déclaration de revenu d'un contribuable pour une année d'imposition, fixe l'impôt pour l'année, ainsi que les intérêts et les pénalités éventuels payables et détermine : **a)** le montant du remboursement éventuel auquel il a droit en vertu des articles 129, 131, 132 ou 133, pour l'année; **b)** le montant d'impôt qui est réputé, par les paragraphes 120(2) ou (2.2), 122.5(3), 122.51(2), 125.4(3), 125.5(3), 127.1(1), 127.41(3) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année.

Liability not dependent on assessment **152(3)** Liability for the tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.	**Responsabilité indépendante de l'avis** **152(3)** Le fait qu'une cotisation est inexacte ou incomplète ou qu'aucune cotisation n'a été faite n'a pas d'effet sur les responsabilités du contribuable à l'égard de l'impôt prévu par la présente partie.

Assessment and reassessment **152(4)** The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if **(a)** the taxpayer or person filing the return **(i)** has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, **(ii)** has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year; or **(b)** the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and **(i)** is required pursuant to subsection 152(6) or would be so required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to therein, **(ii)** is made as a consequence of the assessment or reassessment pursuant to this paragraph or subsection 152(6) of tax payable by another taxpayer, **(iii)** is made as a consequence of a transaction involving the	**Cotisation et nouvelle cotisation** **152(4)** Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant l'impôt pour une année d'imposition, ainsi que les intérêts ou les pénalités, qui sont payables par un contribuable en vertu de la présente partie ou donner avis par écrit qu'aucun impôt n'est payable pour l'année à toute personne qui a produit une déclaration de revenu pour une année d'imposition. Pareille cotisation ne peut être établie après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans les cas suivants : **a)** le contribuable ou la personne produisant la déclaration : **(i)** soit a fait une présentation erronée des faits, par négligence, inattention ou omission volontaire, ou a commis quelque fraude en produisant la déclaration ou en fournissant quelque renseignement sous le régime de la présente loi, **(ii)** soit a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période normale de nouvelle cotisation applicable au contribuable pour l'année; **b)** la cotisation est établie avant le jour qui suit de trois ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et, selon le cas : **(i)** est à établir en conformité au paragraphe (6) ou le serait si le contribuable avait déduit un montant en présentant le formulaire prescrit visé à ce paragraphe au plus tard le jour qui y est mentionné, **(ii)** est établie par suite de l'établissement, en application

taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length, **(iii.1)** is made, if the taxpayer is non-resident and carries on a business in Canada, as a consequence of **(A)** an allocation by the taxpayer of revenues or expenses as amounts in respect of the Canadian business (other than revenues and expenses that relate solely to the Canadian business, that are recorded in the books of account of the Canadian business, and the documentation in support of which is kept in Canada), or **(B)** a notional transaction between the taxpayer and its Canadian business, where the transaction is recognized for the purposes of the computation of an amount under this Act or an applicable tax treaty. **(iv)** is made as a consequence of a payment or reimbursement of any income or profits tax to or by the government of a country other than Canada or a government of a state, province or other political subdivision of any such country, **(v)** is made as a consequence of a reduction under subsection 66(12.73) of an amount purported to be renounced under section 66, or	du présent paragraphe ou du paragraphe (6), d'une cotisation ou d'une nouvelle cotisation concernant l'impôt payable par un autre contribuable, **(iii)** est établie par suite de la conclusion d'une opération entre le contribuable et une personne non résidente avec laquelle il avait un lien de dépendance, **(iii.1)** si le contribuable est un non-résident exploitant une entreprise au Canada, est établie par suite : **(A)** soit d'une attribution, par le contribuable, de recettes ou de dépenses au titre de montants relatifs à l'entreprise canadienne (sauf des recettes et des dépenses se rapportant uniquement à l'entreprise canadienne qui sont inscrits dans les documents comptables de celle-ci et étayés de documents conservés au Canada), **(B)** soit d'une opération théorique entre le contribuable et son entreprise canadienne, qui est reconnue aux fins du calcul d'un montant en vertu de la présente loi ou d'un traité fiscal applicable, **(iv)** est établie par suite d'un paiement supplémentaire ou d'un remboursement d'impôt sur le revenu ou sur les bénéfices effectué au gouvernement d'un pays

(vi) is made in order to give effect to the application of subsection 118.1(15) or 118.1(16).	étranger, ou d'un état, d'une province ou autre subdivision politique d'un tel pays, ou par ce gouvernement, **(v)** est établie par suite d'une réduction, opérée en application du paragraphe 66(12.73), d'un montant auquel il a été censément renoncé en vertu de l'article 66, **(vi)** est établie en vue de l'application des paragraphes 118.1(15) ou (16).

Reassessment where certain deductions claimed **152(6)** Where a taxpayer has filed for a particular taxation year the return of income required by section 150 and an amount is subsequently claimed by the taxpayer or on the taxpayer's behalf for the year as **(a)** a deduction under paragraph 3(e) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by virtue of the taxpayer's death in a subsequent taxation year and the consequent application of section 71 of that Act in respect of an allowable capital loss for the year, **(b)** a deduction under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year, **(b.1)** a deduction under paragraph 60(i) in respect of a premium (within the meaning assigned by subsection 146(1)) paid in a subsequent taxation year under a registered retirement savings plan where the premium is deductible by reason of subsection 146(6.1), **(c)** a deduction under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year, **(c.1)** a deduction under section 119 in respect of a disposition in a subsequent taxation year, **(d)** a deduction under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year, **(e)** a deduction under section 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year, **(f)** a deduction under section 125.3 in respect of an unused Part I.3 tax credit	**Nouvelle cotisation en cas de nouvelles déductions** **152(6)** Lorsqu'un contribuable a produit la déclaration de revenu exigée par l'article 150 pour une année d'imposition et que, par la suite, une somme est demandée pour l'année par lui ou pour son compte à titre de : **a)** déduction, en application de l'alinéa 3e) de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts revisés du Canada de 1952, résultant de son décès au cours d'une année d'imposition ultérieure ayant entraîné l'application de l'article 71 de la même loi relativement à une perte en capital déductible pour l'année; **b)** déduction d'un montant en vertu de l'article 41 relativement à sa perte relative à des biens meubles déterminés pour une année d'imposition ultérieure; **b.1)** déduction, en application de l'alinéa 60i), relativement à une prime, au sens du paragraphe 146(1), versée au cours d'une année d'imposition ultérieure dans le cadre d'un régime enregistré d'épargne-retraite et déductible en application du paragraphe 146(6.1); **c)** déduction, en application de l'article 118.1, relativement à un don fait au cours d'une année d'imposition ultérieure ou, en application de l'article 111, relativement à une perte subie pour une année d'imposition ultérieure; **c.1)** déduction, en application de l'article 119, relativement à une disposition effectuée au cours d'une année d'imposition ultérieure; **d)** déduction, en application du paragraphe 127(5), relativement à des biens acquis ou des dépenses faites au cours d'une année d'imposition ultérieure;

(within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year, **(f.1)** a deduction under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year, **(f.2)** a deduction under subsection 128.1(8) as a result of a disposition in a subsequent taxation year, **(g)** a deduction under subsection 147.2(4) because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year, **(h)** a deduction by virtue of an election for a subsequent taxation year under paragraph 164(6)(c) or 164(6)(d) by the taxpayer's legal representative, by filing with the Minister, on or before the day on or before which the taxpayer is, or would be if a tax under this Part were payable by the taxpayer for that subsequent taxation year, required by section 150 to file a return of income for that subsequent taxation year, a prescribed form amending the return, the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the deduction claimed.	**e)** déduction, en application de l'article 125.2, au titre d'un crédit d'impôt de la partie VI inutilisé, au sens du paragraphe 125.2(3), pour une année d'imposition ultérieure; **f)** déduction, en application de l'article 125.3, au titre d'un crédit d'impôt de la partie I.3 inutilisé, au sens du paragraphe 125.3(3), pour une année d'imposition ultérieure; **f.1)** déduction, en application du paragraphe 126(2), relativement à la fraction inutilisée du crédit pour impôt étranger (au sens du paragraphe 126(7)) ou, en application des paragraphes 126(2.21) ou (2.22), relativement aux impôts étrangers payés, pour une année d'imposition ultérieure; **f.2)** déduction, en application du paragraphe 128.1(8), par suite d'une disposition effectuée au cours d'une année d'imposition ultérieure; **g)** déduction, en application du paragraphe 147.2(4), du fait que le paragraphe 147.2(6) s'applique par suite du décès du contribuable au cours de l'année d'imposition subséquente; **h)** déduction à cause d'un choix pour une année d'imposition ultérieure effectué par son représentant légal en vertu de l'alinéa 164(6)c) ou d), en présentant au ministre, au plus tard le jour où le contribuable est tenu, ou le serait s'il était tenu de payer de l'impôt en vertu de la présente partie pour cette année d'imposition ultérieure, de produire en vertu de l'article 150 une déclaration de revenu pour cette année d'imposition ultérieure, un formulaire prescrit modifiant la déclaration, le ministre doit fixer de nouveau l'impôt du contribuable pour toute année d'imposition pertinente (autre qu'une année d'imposition antérieure à l'année donnée) afin de tenir compte de la déduction demandée.

Assessment deemed valid and binding **152(8)** An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.	**Présomption de validité de la cotisation** **152(8)** Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

General **161 (1)** Where at any time after a taxpayer's balance-due day for a taxation year **(a)** the total of the taxpayer's taxes payable under this Part and Parts I.3, VI and VI.1 for the year exceeds **(b)** the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI or VI.1 for the year, the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.	**Disposition générale** **161 (1)** Dans le cas où le total visé à l'alinéa a) excède le total visé à l'alinéa b) à un moment postérieur à la date d'exigibilité du solde qui est applicable à un contribuable pour une année d'imposition, le contribuable est tenu de verser au receveur général des intérêts sur l'excédent, calculés au taux prescrit pour la période au cours de laquelle cet excédent est impayé : **a)** le total des impôts payables par le contribuable pour l'année en vertu de la présente partie et des parties I.3, VI et VI.1; **b)** le total des montants représentant chacun un montant payé au plus tard à ce moment au titre de l'impôt payable par le contribuable et imputé par le ministre, à compter de ce moment, sur le montant dont le contribuable est redevable pour l'année en vertu de la présente partie ou des parties I.3, VI ou VI.1.

Effect of carryback of loss, etc. **161(7)** For the purpose of computing interest under subsection 161(1) or 161(2) on tax or a part of an instalment of tax for a taxation year, and for the purpose of section 163.1, **(a)** the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is deemed to be the amount that it would be if the consequences of the deduction or exclusion of the following amounts were not taken into consideration: **(i)** any amount deducted under section 119 in respect of a disposition in a subsequent taxation year, **(ii)** any amount deducted under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year, **(iii)** any amount excluded from the taxpayer's income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year, **(iv)** any amount deducted under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year, **(iv.1)** any amount deducted under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year, **(iv.2)** any amount deducted in computing the taxpayer's income for the year by virtue of an election in a subsequent taxation year under paragraph 164(6)(c) or 164(6)(d) by the taxpayer's legal representative, **(v)** any amount deducted under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,	**Effet du report d'une perte sur une année antérieure** **(7)** Pour le calcul des intérêts à verser en application des paragraphes (1) ou (2) sur l'impôt ou sur une partie d'un acompte provisionnel pour une année d'imposition et pour l'application de l'article 163.1: **a)** l'impôt payable par le contribuable pour l'année en vertu de la présente partie et des parties I.3, VI et VI.1 est réputé égal au montant qui serait payable si les conséquences de la déduction ou de l'exclusion des montants suivants n'étaient pas prises en compte : **(i)** un montant déduit, en application de l'article 119, relativement à une disposition effectuée au cours d'une année d'imposition ultérieure, **(ii)** un montant déduit, en application de l'article 41, à l'égard de la perte relative à des biens meubles déterminés que le contribuable a subie pour une année d'imposition ultérieure, **(iii)** un montant exclu de son revenu pour l'année, en application de l'article 49, à l'égard de la levée d'une option au cours d'une année d'imposition ultérieure, **(iv)** un montant déduit, en application de l'article 118.1, à l'égard d'un don fait au cours d'une année d'imposition ultérieure ou, en application de l'article 111, à l'égard d'une perte subie pour une année d'imposition ultérieure, **(iv.1)** un montant déduit en application soit du paragraphe 126(2) à l'égard de la fraction inutilisée du crédit pour impôt étranger (au sens du paragraphe 126(7)), soit des paragraphes 126(2.21) ou (2.22) à l'égard des impôts étrangers payés, pour une année d'imposition ultérieure,

(vi) any amount deducted under section 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year,	**(iv.2)** un montant déduit dans le calcul de son revenu pour l'année à cause d'un choix effectué par son représentant légal au cours d'une année d'imposition ultérieure en vertu de l'alinéa 164(6)c) ou d),
(vii) any amount deducted under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,	**(v)** un montant déduit, en application du paragraphe 127(5), à l'égard d'un bien acquis, ou d'une dépense faite, au cours d'une année d'imposition ultérieure,
(viii) any amount deducted, in respect of a repayment under subsection 68.4(7) of the *Excise Tax Act* made in a subsequent taxation year, in computing the amount determined under subparagraph 12(1)(x.1)(ii),	**(vi)** un montant déduit, en application de l'article 125.2, au titre d'un crédit d'impôt de la partie VI inutilisé, au sens du paragraphe 125.2(3), pour une année d'imposition ultérieure,
(viii.1) any amount deducted under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year,	**(vii)** un montant déduit, en application de l'article 125.3, au titre d'un crédit d'impôt de la partie I.3 inutilisé, au sens du paragraphe 125.3(3), pour une année d'imposition ultérieure;
(ix) any amount deducted under subsection 181.1(4) in respect of any unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer for a subsequent taxation year,	**(viii)** un montant déduit, au titre d'une restitution effectuée selon le paragraphe 68.4(7) de la *Loi sur la taxe d'accise* au cours d'une année d'imposition ultérieure, dans le calcul du montant déterminé selon le sous-alinéa 12(1)x.1)(ii),
(x) any amount deducted under subsection 190.1(3) in respect of any unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer for a subsequent taxation year, and	**(viii.1)** un montant déduit en application du paragraphe 147.2(4) dans le calcul du revenu du contribuable pour l'année du fait que le paragraphe 147.2(6) s'applique par suite du décès du contribuable au cours de l'année d'imposition subséquente,
(xi) any amount deducted under any of subsections 128.1(6) to (8) from the taxpayer's proceeds of disposition of a property because of an election made in a return of income for a subsequent taxation year; and	**(ix)** un montant déduit, en application du paragraphe 181.1(4), au titre d'un crédit de surtaxe inutilisé, au sens du paragraphe 181.1(6), du contribuable pour une année d'imposition ultérieure,
(b) the amount by which the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is reduced as a consequence of the deduction or exclusion of amounts described in paragraph (a) is deemed	**(x)** un montant déduit, en application du paragraphe 190.1(3), au titre d'un crédit d'impôt de la partie I inutilisé, au sens du paragraphe 190.1(5), du

to have been paid on account of the taxpayer's tax payable under this Part for the year on the day that is 30 days after the latest of **(i)** the first day immediately following that subsequent taxation year, **(ii)** the day on which the taxpayer's or the taxpayer's legal representative's return of income for that subsequent taxation year was filed, **(iii)** where an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed in accordance with subsection 49(4) or 152(6) or paragraph 164(6)(e), the day on which the amended return or prescribed form was filed, and **(iv)** where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.	contribuable pour une année d'imposition ultérieure, **(xi)** un montant déduit, en application de l'un des paragraphes 128.1(6) à (8), du produit de disposition du bien pour le contribuable en raison d'un choix fait dans une déclaration de revenu pour une année d'imposition ultérieure; **b)** la somme qui est appliquée en réduction de l'impôt payable par le contribuable pour l'année en vertu de la présente partie et des parties I.3, VI et VI.1 par suite de la déduction ou de l'exclusion de montants visés à l'alinéa a) est réputée avoir été versée au titre de son impôt payable pour l'année en vertu de la présente partie le trentième jour suivant le dernier en date des jours suivants : **(i)** le premier jour qui suit cette année d'imposition ultérieure, **(ii)** le jour où la déclaration de revenu du contribuable ou de son représentant légal pour cette année d'imposition ultérieure a été produite, **(iii)** le jour où une déclaration de revenu modifiée du contribuable pour l'année a été produite ou un formulaire prescrit modifiant sa déclaration de revenu pour l'année a été présenté conformément au paragraphe 49(4) ou 152(6) ou à l'alinéa 164(6)e), dans le cas où il y a une telle production ou présentation, **(iv)** le jour de la demande écrite à la suite de laquelle le ministre établit une nouvelle cotisation concernant l'impôt du contribuable pour l'année et qui tient compte de la déduction ou de l'exclusion, dans le cas où il y a une telle nouvelle cotisation.

Interest on refunds and repayments **164(3)** Where under this section an amount in respect of a taxation year (other than an amount or portion of it that can reasonably be considered to arise from the operation of section 122.5, 122.61 or 126.1) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period beginning on the day that is the latest of the days referred to in the following paragraphs and ending on the day on which the amount is refunded, repaid or applied: **(a)** if the taxpayer is an individual, the day that is 30 days after the individual's balance-due day for the year; **(b)** if the taxpayer is a corporation, the day that is 120 days after the end of the year; **(c)** if the taxpayer is **(i)** a corporation, the day that is 30 days after the day on which its return of income for the year was filed under section 150, unless the return was filed on or before the corporation's filing-due date for the year, and **(ii)** an individual, the day that is 30 days after the day on which the individual's return of income for the year was filed under section 150; **(d)** in the case of a refund of an overpayment, the day on which the overpayment arose; and **(e)** in the case of a repayment of an amount in controversy, the day on which an overpayment equal to the amount of the repayment would have arisen if the total of all amounts payable on account of the taxpayer's liability under this Part for the year were the amount by which	**Intérêts sur les sommes remboursées** **164(3)** Lorsque, en vertu du présent article, une somme à l'égard d'une année d'imposition est remboursée à un contribuable ou imputée sur tout autre montant dont il est redevable, à l'exception de tout ou partie de la somme qu'il est raisonnable de considérer comme découlant de l'application des articles 122.5, 122.61 ou 126.1, le ministre paie au contribuable les intérêts afférents à cette somme au taux prescrit ou les impute sur cet autre montant, pour la période allant du dernier en date des jours visés aux alinéas ci-après jusqu'au jour où la somme est remboursée ou imputée : **a)** si le contribuable est un particulier, le trentième jour suivant la date d'exigibilité du solde qui lui est applicable pour l'année; **b)** si le contribuable est une société, le cent vingtième jour suivant la fin de l'année; **c)** si le contribuable est : **(i)** une société, le trentième jour suivant celui où sa déclaration de revenu pour l'année a été produite en conformité avec l'article 150, sauf si la déclaration a été produite au plus tard à la date d'échéance de production qui lui est applicable pour l'année, **(ii)** un particulier, le trentième jour suivant celui où sa déclaration de revenu pour l'année a été produite en conformité avec l'article 150; **d)** dans le cas du remboursement d'un paiement en trop d'impôt, le jour où il y a eu paiement en trop; **e)** dans le cas du remboursement d'une somme en litige, le jour où il y aurait eu un paiement en trop égal à la somme remboursée si le total des sommes payables sur ce dont le contribuable est redevable en vertu de

(i) the lesser of the total of all amounts paid on account of the taxpayer's liability under this Part for the year and the total of all amounts assessed by the Minister as payable under this Part by the taxpayer for the year exceeds **(ii)** the amount repaid.	la présente partie pour l'année était égal à l'excédent du total visé au sous-alinéa (i) sur la somme visée au sous-alinéa (ii) : **(i)** le total des sommes versées sur ce dont il est redevable en vertu de la présente partie pour l'année ou, s'il est moins élevé, le total des sommes qui, selon la cotisation établie par le ministre, sont à payer en vertu de la présente partie par le contribuable pour l'année, **(ii)** la somme remboursée.

Effect of carryback of loss, etc. **164(5)** For the purpose of subsection 164(3), the portion of any overpayment of the tax payable by a taxpayer for a taxation year that arose as a consequence of **(a)** the deduction of an amount, in respect of a repayment under subsection 68.4(7) of the *Excise Tax Act* made in a subsequent taxation year, in computing the amount determined under subparagraph 12(1)(x.1)(ii), **(a.1)** any amount deducted under section 119 in respect of the disposition of a taxable Canadian property in a subsequent taxation year, **(b)** the deduction of an amount under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year, **(c)** the exclusion of an amount from the taxpayer's income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year, **(d)** the deduction of an amount under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year, **(e)** the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year, **(f)** the deduction of an amount under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year, **(g)** the deduction of an amount under section 125.2 in respect of an unused Part VI tax credit (within the meaning assigned by subsection 125.2(3)) for a subsequent taxation year, **(h)** the deduction of an amount under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by	**Effet d'une perte, etc.** **164(5)** Pour l'application du paragraphe (3), il est réputé y avoir eu partie de paiement en trop de l'impôt payable par un contribuable pour une année d'imposition, si cette partie résulte de : **a)** la déduction d'un montant, au titre d'une restitution effectuée selon le paragraphe 68.4(7) de la *Loi sur la taxe d'accise* au cours d'une année d'imposition ultérieure, dans le calcul du montant déterminé selon le sous-alinéa 12(1)x.1)(ii), **a.1)** la déduction d'un montant en application de l'article 119 à l'égard de la disposition d'un bien canadien imposable au cours d'une année d'imposition ultérieure; **b)** la déduction d'un montant, en application de l'article 41, à l'égard de la perte relative à des biens meubles déterminés que le contribuable a subie pour une année d'imposition ultérieure; **c)** l'exclusion d'un montant de son revenu pour l'année, en application de l'article 49, à l'égard de la levée d'une option au cours d'une année d'imposition ultérieure; **d)** la déduction d'un montant, en application de l'article 118.1, à l'égard d'un don fait au cours d'une année d'imposition ultérieure ou, en application de l'article 111, à l'égard d'une perte subie pour une année d'imposition ultérieure; **e)** la déduction d'un montant en application soit du paragraphe 126(2) à l'égard de la fraction inutilisée du crédit pour impôt étranger (au sens du paragraphe 126(7)), soit des paragraphes 126(2.21) ou (2.22) à l'égard des impôts étrangers payés, pour une année d'imposition ultérieure; **f)** la déduction d'un montant, en application du paragraphe 127(5), à l'égard d'un bien acquis, ou d'une dépense faite, au cours d'une année d'imposition ultérieure; **g)** la déduction d'un montant, en application de l'article 125.2, au titre d'un crédit d'impôt de la partie VI inutilisé, au sens du paragraphe

subsection 125.3(3)) for a subsequent taxation year,	125.2(3), pour une année d'imposition ultérieure;
(h.01) the deduction of an amount under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the following taxation year,	**h)** la déduction d'un montant, en application de l'article 125.3, au titre d'un crédit d'impôt de la partie I.3 inutilisé, au sens du paragraphe 125.3(3), pour une année d'imposition ultérieure;
(h.02) the deduction under any of subsections 128.1(6) to (8) of an amount from the taxpayer's proceeds of disposition of a property, because of an election made in a return of income for a subsequent taxation year,	**h.01)** la déduction d'un montant, en application du paragraphe 147.2(4), dans le calcul du revenu du contribuable pour l'année du fait que le paragraphe 147.2(6) s'applique par suite du décès du contribuable au cours de l'année d'imposition subséquente;
(h.1) the deduction of an amount in computing the taxpayer's income for the year by virtue of an election for a subsequent taxation year under paragraph 164(6)(c) or 164(6)(d) by the taxpayer's legal representative,	**h.02)** la déduction d'un montant, en application de l'un des paragraphes 128.1(6) à (8), du produit de disposition d'un bien pour le contribuable, en raison d'un choix fait dans une déclaration de revenu pour une année d'imposition ultérieure;
(h.2) the deduction of an amount under subsection 181.1(4) in respect of an unused surtax credit (within the meaning assigned by subsection 181.1(6)) of the taxpayer for a subsequent taxation year, or	**h.1)** la déduction d'un montant dans le calcul de son revenu pour l'année à cause d'un choix pour une année d'imposition ultérieure effectué par son représentant légal en vertu de l'alinéa (6)c) ou d),
(h.3) the deduction of an amount under subsection 190.1(3) in respect of an unused Part I tax credit (within the meaning assigned by subsection 190.1(5)) of the taxpayer for a subsequent taxation year,	**h.2)** la déduction d'un montant, en application du paragraphe 181.1(4), au titre d'un crédit de surtaxe inutilisé, au sens du paragraphe 181.1(6), du contribuable pour une année d'imposition ultérieure;
is deemed to have arisen on the day that is 30 days after the latest of	**h.3)** la déduction d'un montant, en application du paragraphe 190.1(3), au titre d'un crédit d'impôt de la partie I inutilisé, au sens du paragraphe 190.1(5), du contribuable pour une année d'imposition ultérieure,
(i) the first day immediately following that subsequent taxation year,	le trentième jour suivant le dernier en date des jours suivants :
(j) the day on which the taxpayer's or the taxpayer's legal representative's return of income for that subsequent taxation year was filed,	**i)** le premier jour qui suit cette année d'imposition ultérieure;
(k) where an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed under paragraph 164(6)(e) or subsection 49(4) or 152(6), the day on which the amended return or prescribed form was filed, and	**j)** le jour où la déclaration de revenu du contribuable ou de son représentant légal pour cette année d'imposition ultérieure a été produite;
	k) le jour où une déclaration de revenu modifiée du contribuable pour l'année a été produite ou un formulaire prescrit modifiant sa déclaration de revenu pour l'année a été

(l) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made.	présenté conformément à l'alinéa (6)e) ou au paragraphe 49(4) ou 152(6), dans le cas où il y a une telle production ou présentation; **l)** le jour de la demande écrite à la suite de laquelle le ministre établit une nouvelle cotisation concernant l'impôt du contribuable pour l'année et qui tient compte de la déduction ou de l'exclusion, dans le cas où il y a une telle nouvelle cotisation.

12. (1) Section 54 of the said Act is amended by adding thereto the following subsection: Effect of carry back of loss.

"(8) Where a taxpayer is entitled to deduct under section 27 in computing his taxable income for a taxation year an amount in respect of a loss sustained in the taxation year immediately following the taxation year (hereinafter in this subsection referred to as "the loss year"), for the purpose of computing interest under subsection (1) or (2) on tax or a part or instalment of tax for the taxation year for any portion of the period in respect of which the interest is payable on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 27 in respect of that loss."

(2) This section is applicable to the 1954 and subsequent taxation years.

13. (1) Section 57 of the said Act is amended by adding thereto the following subsection:

Effect of carry back of loss.

"(5) Where a taxpayer is entitled to deduct under section 27 in computing his taxable income for a taxation year an amount in respect of a loss sustained in the taxation year immediately following the taxation year (hereinafter in this subsection referred to as "the loss year"), and the amount of the tax payable for the taxation year is relevant in determining an overpayment for the purpose of computing interest under subsection (3) for any portion of a period ending on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 27 in respect of that loss."

(2) This section is applicable to the 1954 and subsequent taxation years.

Effect of carry back of loss

(7) Where a taxpayer is entitled to deduct under section 111 in computing his taxable income for a taxation year an amount in respect of a loss for the taxation year immediately following the taxation year (hereinafter in this subsection referred to as "the loss year"), for the purpose of computing interest under subsection (1) or (2) on tax or a part or instalment of tax for the taxation year for any portion of the period in respect of which the interest is payable on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 111 in respect of that loss.

Effet du report d'une perte sur une année antérieure

(7) Lorsqu'un contribuable a le droit, en vertu de l'article 111, de déduire lors du calcul de son revenu imposable pour une année d'imposition, une somme au titre d'une perte subie au cours de l'année d'imposition qui suit l'année d'imposition considérée (appelée ci-après dans le présent paragraphe «l'année de la perte»), l'impôt payable pour cette année d'imposition est, aux fins du calcul des intérêts à acquitter, en vertu du paragraphe (1) ou (2), sur l'impôt ou sur un acompte provisionnel ou une fraction de l'impôt d'une année d'imposition pour toute partie de la période au titre de laquelle les intérêts doivent être payés pour le dernier jour de l'année de la perte, réputé être égal à celui que le contribuable aurait eu à payer s'il n'avait pas eu le droit, en vertu de l'article 111, de déduire une somme quelconque au titre de cette perte.

(2) Subsection 161(7) of the said Act is repealed and the following substituted therefor:

Effect of carryback of loss, etc.

"(7) For the purpose of computing interest under subsection (1) or (2) on tax or a part or an instalment of tax for a taxation year,

(*a*) the tax payable by the taxpayer under this Part for the year shall be deemed to be the amount that it would have been if none of the following amounts, namely,

(i) any amount deducted under paragraph 3(*e*) by virtue of his death in a subsequent taxation year and the consequent application of section 71 in respect of an allowable capital loss for the year,

(ii) any amount deducted under section 41 in respect of his listed-personal-property loss for a subsequent taxation year,

(iii) any amount excluded from his income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year,

(iv) any amount deducted under section 110 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(v) any amount deducted under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(vi) any amount deducted under subsection 127.2(1) in respect of his unused share-purchase tax credit for a subsequent taxation year, or

(vii) any amount deducted under subsection 127.3(1) in respect of his unused scientific research tax credit for a subsequent taxation year,

were so excluded or deducted for the year, as the case may be; and

(*b*) the amount by which the tax payable by the taxpayer under this Part for the year is reduced by virtue of the exclusion or deduction, as the case may be, of an amount described in any of

(2) Le paragraphe 161(7) de la même loi est abrogé et remplacé par ce qui suit :

Effet du report d'une perte sur une année antérieure

«(7) Aux fins du calcul des intérêts à acquitter en vertu du paragraphe (1) ou (2), sur la totalité ou une partie de l'impôt ou sur un acompte provisionnel d'impôt pour une année d'imposition,

a) l'impôt payable par le contribuable en vertu de la présente Partie pour l'année est réputé égal au montant que le contribuable aurait eu à payer si aucun des montants suivants, à savoir :

(i) tout montant déduit, en application de l'alinéa 3*e*), résultant de son décès au cours d'une année d'imposition subséquente ayant entraîné l'application de l'article 71 relativement à une perte en capital déductible pour l'année,

(ii) tout montant déduit en vertu de l'article 41 relativement à sa perte relative à des biens personnels désignés pour une année d'imposition subséquente,

(iii) tout montant exclu de son revenu pour l'année, par l'application de l'article 49, relativement à l'exercice d'un choix dans une année d'imposition subséquente,

(iv) tout montant déduit, en application de l'article 110, relativement à un don fait dans une année d'imposition subséquente ou, en application de l'article 111, relativement à une perte subie pour une année d'imposition subséquente,

(v) tout montant déduit, en application du paragraphe 127(5), relativement à des biens acquis ou des dépenses faites dans une année d'imposition subséquente,

(vi) tout montant déduit en application du paragraphe 127.2(1) à l'égard de la partie inutilisée de son crédit d'impôt à l'achat d'actions pour une année d'imposition subséquente, ou

(vii) tout montant déduit en application du paragraphe 127.3(1) à l'égard de la partie inutilisée de son crédit d'impôt pour la recherche scientifique

subparagraphs (*a*)(i) to (vii) shall be deemed to have been paid by the taxpayer, on account of his tax payable for the year under this Part, on the later of

(i) the day on which his return of income under section 150 was filed for that subsequent taxation year, and

(ii) the day on or before which he is, or would be if a tax under this Part were payable by him for that subsequent taxation year, required to file his return of income under section 150 for that subsequent taxation year."

pour une année d'imposition subséquente,

n'avait été ainsi exclu ou déduit, selon le cas, pour l'année; et

b) le montant de la réduction de l'impôt payable par le contribuable en vertu de la présente Partie pour l'année donnée, résultant de l'exclusio n ou de la déduction, selon le cas, d'un montant visé à l'un des sous-alinéas *a*)(i) à (vii), est réputé avoir été payé par le contribuable au titre de son impôt à payer pour l'année donnée en vertu de la présente Partie, à la plus tardive des dates suivantes :

(i) le jour où il a produit, en application de l'article 150, sa déclaration de revenu pour cette année d'imposition subséquente, ou

(ii) le jour où il est tenu, ou le serait s'il était tenu de payer de l'impôt en vertu de la présente Partie pour cette année d'imposition subséquente, au plus tard, de produire sa déclaration de revenu en vertu de l'article 150 pour cette année d'imposition subséquente.»

(3) Subsection 164(5) of the said Act is repealed and the following substituted therefor:

Effect of carryback of loss, etc.

"(5) For the purpose of subsection (3), the portion of any overpayment of the tax payable by a taxpayer for a taxation year that arose as a consequence of

(*a*) the deduction of an amount under paragraph 3(*e*), by virtue of his death in a subsequent taxation year and the consequent application of section 71 in respect of an allowable capital loss for the year,

(*b*) the deduction of an amount under section 41 in respect of his listed-personal-property loss for a subsequent taxation year,

(*c*) the exclusion of an amount from his income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year,

(*d*) the deduction of an amount under section 110 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

(*e*) the deduction of an amount under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(3) Le paragraphe 164(5) de la même loi est abrogé et remplacé par ce qui suit :

Effet d'une perte, etc.

«(5) Pour l'application du paragraphe (3), la fraction de tout paiement en trop de l'impôt payable par un contribuable pour une année d'imposition résultant de

a) la déduction d'un montant, en application de l'alinéa 3*e*), résultant de son décès au cours d'une année d'imposition subséquente ayant entraîné l'application de l'article 71 relativement à une perte en capital déductible pour l'année,

b) la déduction d'un montant, en application de l'article 41, relativement à sa perte relative à des biens personnels désignés pour une année d'imposition subséquente,

c) l'exclusion d'un montant de son revenu pour l'année, en application de l'article 49, relativement à l'exercice d'un choix dans une année d'imposition subséquente,

d) la déduction d'un montant, en application de l'article 110, relativement à un don fait dans une année d'imposition subséquente ou, en application de l'article 111, relativement à une perte subie pour une année d'imposition subséquente,

(*f*) the deduction of an amount under subsection 127.2(1) in respect of his unused share-purchase tax credit for a subsequent taxation year, or

(*g*) the deduction of an amount under subsection 127.3(1) in respect of his unused scientific research tax credit for a subsequent taxation year,

shall be deemed to have arisen on the later of

(*h*) the day on which his return of income under section 150 was filed for that subsequent taxation year, and

(*i*) the day on or before which the taxpayer is, or would be if tax under this Part were payable by him for that subsequent taxation year, required to file his return of income under section 150 for that subsequent taxation year."

e) la déduction d'un montant, en application du paragraphe 127(5), relativement à des biens acquis ou des dépenses faites dans une année d'imposition subséquente, ou

f) la déduction d'un montant, en application du paragraphe 127.2(1), relativement à la partie inutilisée de son crédit d'impôt à l'achat d'actions pour une année d'imposition subséquente, ou

g) la déduction d'un montant, en application du paragraphe 127.3(1), relativement à la partie inutilisée de son crédit d'impôt pour la recherche scientifique pour une année d'imposition subséquente,

est réputée avoir été versée à la plus tardive des dates suivantes :

h) le jour de la production, en application de l'article 150, de sa déclaration de revenu pour cette année d'imposition subséquente, ou

i) le jour où le contribuable est tenu, ou auquel il le serait s'il était tenu de payer de l'impôt en vertu de la présente Partie pour cette année d'imposition subséquente, au plus tard, de produire sa déclaration de revenu en vertu de l'article 150 pour cette année d'imposition subséquente.»

(3) Paragraph 161(7)(*b*) of the said Act is repealed and the following substituted therefor:

"(*b*) the amount by which the tax payable by the taxpayer under this Part for the year is reduced by virtue of the exclusion or deduction, as the case may be, of an amount described in any of

(3) L'alinéa 161(7)*b*) de la même loi est abrogé et remplacé par ce qui suit :

«*b*) le montant de la réduction de l'impôt payable par le contribuable en vertu de la présente partie pour l'année, qui résulte de l'exclusion ou de la déduction, selon le cas, d'un montant visé à l'un des

subparagraphs (*a*)(i) to (vii) shall be deemed to have been paid by the taxpayer on account of his tax payable for the year under this Part on the day that is the latest of

(i) the first day immediately following that subsequent taxation year,

(ii) the day on which the taxpayer's return of income for that subsequent taxation year was filed,

(iii) where an amended return of the taxpayer's income for the taxation year or a prescribed form amending his return of income for the year was filed in accordance with subsection 49(4) or 152(6), the day on which the amended return or prescribed form was filed, and

(iv) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made."

(4) Subsection (3) is applicable with respect to subsequent taxation years referred to in paragraph 161(7)(*b*) of the said Act, as enacted by subsection (3), ending after 1984.

sous-alinéas *a*)(i) à (vii), est réputé avoir été versé par le contribuable au titre de son impôt payable pour l'année en vertu de la présente partie au dernier en date des jours suivants :

(i) le premier jour qui suit cette année d'imposition ultérieure,

(ii) le jour où la déclaration de revenu du contribuable pour cette année d'imposition ultérieure a été produite,

(iii) le jour où une déclaration modifiée du revenu du contribuable pour l'année d'imposition ou un formulaire prescrit modifiant sa déclaration de revenu pour l'année a été produit conformément au paragraphe 49(4) ou 152(6), dans le cas où il y a une telle production,

(iv) le jour de la demande écrite à la suite de laquelle le ministre établit une nouvelle cotisation concernant l'impôt du contribuable pour l'année, qui tienne compte de la déduction ou de l'exclusion, dans le cas où il y a une telle nouvelle cotisation.»

(4) Le paragraphe (3) s'applique aux années d'imposition ultérieures se terminant après 1984, visées à l'alinéa 161(7)*b*) de la même loi, édicté par le paragraphe (3).

(10) Subsection 164(5) of the said Act is repealed and the following substituted therefor:

(10) Le paragraphe 164(5) de la même loi est abrogé et remplacé par ce qui suit :

Effect of carryback of loss, etc.

"(5) For the purpose of subsection (3), the portion of any overpayment of the tax payable by a taxpayer for a taxation year that arose as a consequence of

(*a*) the deduction of an amount under paragraph 3(*e*) by virtue of his death in a subsequent taxation year and the consequent application of section 71 in

«(5) Pour l'application du paragraphe (3), il est réputé y avoir eu partie de paiement en trop de l'impôt payable par un contribuable pour une année d'imposition, si cette partie résulte de

Effet d'une perte, etc.

a) la déduction d'un montant visé à l'alinéa 3*e*), à cause du décès du contribuable au cours d'une année d'imposi-

respect of an allowable capital loss for the year,

(*b*) the deduction of an amount under section 41 in respect of his listed-personal-property loss for a subsequent taxation year,

(*c*) the exclusion of an amount from his income for the year by virtue of section 49 in respect of the exercise of an option in a subsequent taxation year,

(*d*) the deduction of an amount under section 110 in respect of a gift made in a subsequent year or under section 111 in respect of a loss for a subsequent taxation year,

(*e*) the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by paragraph 126(7)(*e*)) for a subsequent taxation year,

(*f*) the deduction of an amount under subsection 127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(*g*) the deduction of an amount under subsection 127.2(1) in respect of his unused share-purchase tax credit for a subsequent taxation year, or

(*h*) the deduction of an amount under subsection 127.3(1) in respect of his unused scientific research tax credit for a subsequent taxation year,

shall be deemed to have arisen on the day that is the latest of

(*i*) the first day immediately following that subsequent taxation year,

(*j*) the day on which the taxpayer's return of income for that subsequent taxation year was filed,

(*k*) where an amended return of the taxpayer's income for the taxation year or a prescribed form amending his return of income for the year was filed in accordance with subsection 49(4) or 152(6), the day on which the amended return or prescribed form was filed, and

tion ultérieure et de l'application consécutive de l'article 71 à l'égard d'une perte en capital déductible pour l'année,

b) la déduction d'un montant, en application de l'article 41, à l'égard de la perte relative à des biens personnels désignés que le contribuable a subie pour une année d'imposition ultérieure,

c) l'exclusion d'un montant de son revenu pour l'année, en application de l'article 49, à l'égard de la levée d'une option dans une année d'imposition ultérieure,

d) la déduction d'un montant, en application de l'article 110, à l'égard d'un don fait dans une année d'imposition ultérieure ou, en application de l'article 111, à l'égard d'une perte subie pour une année d'imposition ultérieure,

e) la déduction d'un montant, en application du paragraphe 126(2), à l'égard de la fraction inutilisée du crédit pour impôt étranger (au sens de l'alinéa 126(7)*e*)) pour une année d'imposition ultérieure,

f) la déduction d'un montant, en application du paragraphe 127(5), à l'égard d'un bien acquis, ou d'une dépense faite, dans une année d'imposition ultérieure,

g) la déduction d'un montant, en application du paragraphe 127.2(1), à l'égard de la partie inutilisée de son crédit d'impôt à l'achat d'actions pour une année d'imposition ultérieure, ou

h) la déduction d'un montant, en application du paragraphe 127.3(1), à l'égard de la partie inutilisée de son crédit d'impôt pour la recherche scientifique pour une année d'imposition ultérieure,

au dernier en date des jours suivants :

i) le premier jour qui suit cette année d'imposition ultérieure;

j) le jour où la déclaration de revenu du contribuable pour cette année d'imposition ultérieure a été produite;

k) le jour où une déclaration modifiée du revenu du contribuable pour l'année d'imposition ou un formulaire prescrit

(*l*) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made."

modifiant sa déclaration de revenu pour l'année a été produit conformément au paragraphe 49(4) ou 152(6), dans le cas où il y a une telle production;

l) le jour de la demande écrite à la suite de laquelle le ministre établit une nouvelle cotisation concernant l'impôt du contribuable pour l'année, qui tienne compte de la déduction ou de l'exclusion, dans le cas où il y a une telle nouvelle cotisation.»

Under section 12 of this bill, section 54 of the act is amended by adding subsection 8. What happened was this: a man would come along and say "I am not going to pay you any taxes this year because I expect I am going to have a loss next year". And when he did not pay disputes would arise as to interest charges on the instalments he should have paid. This amendment is to clarify the situation, that while you are entitled to carry back a loss, if the taxation year is a year of profit you must pay your tax instalments in the ordinary way, if you are in the class otherwise you may be subject to a penalty by way of interest charges. You cannot anticipate your position during the current taxation year. It is only when the year has passed and it has been determined that you have a loss that an adjustment is made. In the meantime you cannot withhold payment.

Hon. Mr. Isnor: Do clauses 10 and 11 apply to fishermen and lumbermen? Is there a wider scope for them in regard to averaging?

Hon. Mr. Hayden: Yes; and that principle has not been enlarged.

Hon. Mr. Crerar: Do I understand the honourable senator to say that the quarterly instalments have to be paid on the expected profit even though the taxpayers ends the year with a loss?

Hon. Mr. Hayden: Yes.

Hon. Mr. Crerar: Then he is entitled to a refund?

Hon. Mr. Hayden: He files his return and shows his loss, and that he has overpaid, and when he is assessed he receives a refund.

Hon. Mr. Crerar: Does he get any interest on the money that he paid by instalments?

Hon. Mr. Hayden: No.

Hon. Mr. Crerar: Well, that is a very unfair feature in the Income Tax Act.

Hon. Mr. Hayden: I do not know whether "unfair" is the word to use.

Hon. Mr. Baird: Unjust.

Hon. Mr. Hayden: The position taken by the taxing authority is this, that if you have an obligation to pay taxes and you are earning profits during the year, you should pay your instalments of the tax. If you are not making profits then you are not obliged to pay a tax. But section 12, which I was explaining, deals with the situation where a man in a year in which he makes a profit says "I anticipate a loss during the next year and so I am not going to pay this year's tax because I can carry back that loss". The department's reply is, "Yes; under the law you can carry it back, but we will deal with that when we get to that point on the road. In the meantime, you pay".

Interest on Unpaid Taxes

Clause 87

Section 161 of the Act relates to interest on unpaid taxes and on late or deficient tax instalments.

Subclause 87(1)

ITA 161(1)

Subsection 161(1) of the Act provides that interest is payable by a taxpayer on the excess of his tax payable for a taxation year over the amount paid for the year. However, this subsection, as presently worded, does not require interest where taxes have been paid, some portion thereof has been refunded and in a subsequent assessment it is determined that the refund was excessive having regard to the taxpayer's subsequently determined tax liability. The amendment to subsection 161(1) corrects this deficiency by ensuring that interest at the prescribed rate will be payable where a refund is later determined to have been in excess of the amount to which the taxpayer is entitled. The interest will be calculated only for the period after April 19, 1983.

Subclause 87(2)

ITA 161(7)

The amendments to subsection 161(7) of the Act are consequential on the changes to the provisions relating to the carryback of losses and investment tax credits and the introduction of the new share-purchase tax credit and scientific research tax credit. Under the existing provision, where the tax payable for a year is reduced because of the carryback of a loss for a subsequent year, the interest on unpaid tax is calculated, without regard to the loss carryback, for the period to the end of the year in which the loss was incurred. Subsection 161(7) as amended applies where a deduction in respect of a gift, an exclusion of income in consequence of the exercise of an option, a loss, an investment tax credit, or unused share-purchase tax credit or scientific research tax credit is carried back from a subsequent taxation year to reduce the tax payable for a taxation year. It provides that in calculating any interest due on unpaid tax for that year, the tax reduction resulting from the carryback is deemed to be made on the later of the day on or before which the tax return for the subsequent year is required to be filed and the day on which the return is actually filed. This amendment is applicable where an amount is carried back from the 1983 or a subsequent taxation year. Where, however, the later year in which an amount arose ended before April 20, 1983 interest on unpaid tax for a year to which the amount is carried back will be calculated from the end of the later year.

Subclauses 87(3) and (4)

These set out the effective dates for the amendments to section 161 of the Act relating to the computation of interest.

Clause 89

Subclause 89(1)

ITA 164(1)(b)

Section 164 of the Act relates to tax refunds. Subsection 164(1) provides that the Minister of National Revenue may refund an overpayment for tax for a year upon mailing the notice of assessment for the year. Where a refund has not been made in this manner a taxpayer may make application therefor within four years from the end of the year. The amendments to this subsection make the period within which tax refunds may be claimed consistent with the assessment period provided in section 152. The amendments to subsection 152(4) extend the reassessment period from four to seven years where the tax liability is to be adjusted as a result of a claim or losses incurred or investment tax credits earned in a subsequent year. A corresponding change is made to paragraph 164(1)(b) so that the normal four year period for refund applications is extended to seven years in circumstances where the taxpayer claims a deduction in respect of a subsequent year's loss or investment tax credit.

This amendment also provides that the normal four year period in which a refund application may be made for a year commences on the day on which the original notice of assessment for the year was mailed. Under the existing provision the period for claiming a refund runs from the last day of the year. In addition, paragraph 164(1)(b) as amended places an obligation on the Minister of National Revenue to pay a refund for which application has been made within a reasonable time.

The amendments to paragraph 164(1)(b) of the Act are applicable after April 19, 1983.

Subclause 89(2)

ITA 164(3.1)

Subsection 164(3) of the Act provides that interest at the prescribed rate will be paid to a taxpayer on the amount of an overpayment of his Part I tax liability. It provides also that, instead of being paid, the interest may be applied against another tax liability of the taxpayer. New subsection 164(3.1) applies where interest has been paid or applied after April 19, 1983 on the refund of an overpayment of tax and it is subsequently determined that the overpayment was in excess of the amount to which the taxpayer was entitled. Paragraph 164(3.1)(a) provides for the recovery of interest from the taxpayer to the extent that the amount of interest paid exceeds the amount of interest payable on the refund to which he is entitled. Paragraph 164(3.1)(b) provides for the payment by the taxpayer of interest on any excess interest that had previously been paid to him or applied against another of his tax liabilities.

Subclause 89(3)

ITA 164(5)

The amendments to subsection 164(5) of the Act are consequential on the extension of the loss carryback period, the introduction of the investment tax credit carryback and the one year carryback for the new share-purchase tax credit and scientific research tax credit. Under the existing provision, to the extent that an overpayment of tax results from a loss carryback, the interest payable on the overpayment is calculated for the period commencing immediately after the taxa-

tion year in which the loss arose. Subsection 164(5) as amended applies where a deduction in respect of a gift, an exclusion from income in consequence of the exercise of an option, a loss, an investment tax credit, unused share-purchase tax credit or unused scientific research tax credit is carried back from a subsequent taxation year to reduce the tax payable for a previous taxation year. It provides that in calculating any interest payable on an overpayment of taxes, the tax reduction resulting from the carryback is deemed to be made on the later of the day on or before which the tax return for the subsequent taxation year is required to be filed and the day on which the return is actually filed. This amendment is applicable where an amount is carried back from the 1983 or a subsequent taxation year. Where, however, the later year in which an amount arose ended before April 20, 1983 interest payable on any resulting overpayment of tax will be calculated from the end of the later year.

Subclause 89(4)

ITA 164(6)

Subsection 164(6) of the Act sets out special rules for the situation where the estate of a deceased person realizes a capital loss or terminal loss from the disposition of property in its first taxation year. In these circumstances the legal representative of the deceased person may elect to ignore all or any portion of the capital loss (to the extent that the estate's capital losses exceed its capital gains for that year) and all or any portion of the terminal loss (to the extent of the estate's non-capital loss for that year). In this case, these losses are not treated as losses of the estate, in which event the estate is credited on account of its taxes payable with the amount by which the deceased taxpayer's tax would have been reduced if such amounts had been deductible by him in the year of his death. The amendments to subsection 164(6) are strictly consequential on the introduction of the new rules in section 111 relating to farm losses. Subsection 164(6) as amended provides that for the 1983 and subsequent taxation years, the amount of a terminal loss in respect of which an election can be made cannot exceed the aggregate of the estate's non-capital loss and farm loss for its first taxation year. Since farm losses have been excluded from non-capital losses, the effect is to continue the existing rule.

Subclause 89(5)

ITA 164(7)

Subsection 164(7) of the Act defines "overpayment" for the purpose of determining the amount of the refund of taxes to which a taxpayer is entitled and the interest thereon. Subsection 164(7) is amended for the 1983 and subsequent taxation years to clarify that an overpayment is calculated on a year-by-year basis and with respect to taxes payable under Part I of the Act.

Subclauses 89(6) to (9)

These set out the effective dates for the amendments to section 164 of the Act relating to refunds.

Intérêt sur les impôts impayés

Article 87

L'article 161 de la Loi traite de l'intérêt sur les impôts impayés, ainsi que sur les acomptes provisionnels versés en retard ou insuffisants.

Paragraphe 87(1)

LIR 161(1)

Le paragraphe 161(1) de la Loi stipule que le contribuable doit payer de l'intérêt sur l'excédent de l'impôt qu'il doit payer pour l'année d'imposition sur la somme effectivement versée pour l'année. Cependant, le paragraphe en question, dans sa formulation actuelle, n'exige pas le paiement d'intérêts lorsque des impôts ont été versés, qu'une partie en a été remboursée et qu'il est déterminé lors de l'établissement d'une nouvelle cotisation que le remboursement était excessif, compte tenu du montant d'impôt exigible du contribuable par la suite. Le changement apporté au paragraphe 161(1) corrige cette lacune de sorte que l'intérêt devra être payé au taux prescrit lorsqu'il sera déterminé ultérieurement qu'un remboursement dépassait le montant auquel le contribuable avait réellement droit. L'intérêt ne sera calculé que pour la période postérieure au 19 avril 1983.

Paragraphe 87(2)

LIR 161(7)

Les changements du paragraphe 161(7) de la Loi font suite aux modifications apportées aux dispositions traitant du report aux années antérieures des pertes et des crédits d'impôt à l'investissement et aux nouveaux crédits d'impôt à l'achat d'actions et pour la recherche scientifique. D'après la disposition actuelle, lorsque l'impôt à payer pour une année est diminué par le report aux années antérieures d'une perte d'une année ultérieure, l'intérêt sur l'impôt impayé est calculé, sans égard au report de la perte, pour la période allant jusqu'à la fin de l'année où la perte a été subie. Le paragraphe 161(7) sous sa forme modifiée s'applique lorsqu'une déduction au titre d'un don, de l'exclusion d'un élément du revenu par suite de l'exercice d'un choix, d'une perte, d'un crédit d'impôt à l'investissement, d'une partie inutilisée du crédit d'impôt à l'achat d'actions ou du crédit d'impôt pour la recherche scientifique est reportée à partir d'un année d'imposition ultérieure afin de diminuer l'impôt à payer pour une année antérieure. Ce paragraphe stipule que, pour calculer l'intérêt dû sur l'impôt à payer pour l'année en question, la diminution d'impôt entraînée par le report aux années antérieures est réputée avoir eu lieu à la date limite de production de la déclaration d'impôt pour l'année ultérieure ou à sa date de production effective, si elle est postérieure à la date limite. Cette modification s'applique dans le cas des sommes reportées à partir d'une année d'imposition ultérieure se terminant après le 19 avril 1983. Lorsqu'un montant s'applique à une année ultérieure se terminant avant le 20 avril 1983, l'intérêt sur l'impôt impayé pour une année à laquelle le montant est reporté ne sera calculé qu'à la fin de cette année ultérieure.

Paragraphes 87(3) et (4)

Ils indiquent les dates d'entrée en vigueur des changements apportés à l'article 161 de la Loi relativement au calcul de l'intérêt.

Remboursements

Article 89

Paragraphe 89(1)

LIR 164(1)b)

L'article 164 de la Loi porte sur les remboursements d'impôt. Le paragraphe 164(1) stipule que le ministre du Revenu national peut rembourser un paiement d'impôt en trop pour une année, lorsque l'avis de cotisation pour l'année est posté. Quand un remboursement n'a pas été effectué de cette façon, le contribuable peut faire une demande de remboursement dans les quatre ans suivant la fin de l'année. Les changements apportés à ce paragraphe rendent la période de demande des remboursements d'impôt conforme à la période d'établissement d'une cotisation prévue à l'article 152. Les changements apportés au paragraphe 152(4) portent la période d'établissement d'une nouvelle cotisation de quatre à sept ans, lorsque la situation fiscale d'un contribuable doit être modifiée par une demande de pertes subies ou de crédits d'impôt à l'investissement gagnés dans une année ultérieure. Un changement correspondant est apporté à l'alinéa 164(1)b) de façon que la période normale de quatre ans pour les demandes de remboursement soit portée à sept ans lorsque le contribuable demande une déduction au titre d'une perte ou d'un crédit d'impôt à l'investissement d'une année ultérieure.

Cette modification prévoit aussi que la période normale de quatre ans permise pour les demandes de remboursement à l'égard d'une année commencera à la date d'expédition de l'avis initial de cotisation pour l'année. D'après la disposition existante, cette période commence au dernier jour de l'année. De plus, l'alinéa 164(1)b) sous sa forme modifiée oblige le ministre du Revenu national à effectuer un remboursement qui a été demandé dans un délai raisonnable.

Les modifications apportées à l'alinéa 164(1)b) de la Loi s'appliquent après le 19 avril 1983.

Paragraphe 89(2)

LIR 164(3.1)

Le paragraphe 164(3) de la Loi stipule que l'intérêt doit être payé au taux prescrit à un contribuable sur un paiement en trop d'impôt en vertu de la Partie I. Il prévoit aussi que, au lieu d'être versé, l'intérêt peut être déduit des autres impôts dus par le contribuable. Le nouveau paragraphe 164(3.1) s'applique lorsqu'un intérêt a été versé ou imputé après le 19 avril 1983 sur un remboursement de paiement en trop d'impôt et qu'il est déterminé ultérieurement que le paiement en trop dépassait la somme à laquelle avait droit le contribuable, dans la mesure où les intérêts versés dépassent les intérêts à payer sur le remboursement auquel il a droit. L'alinéa 164(3.1)a) prévoit la récupération d'intérêt d'un contribuable dans la mesure où l'intérêt payé excède l'intérêt payable sur le remboursement auquel il a droit. L'alinéa 164(3.1)b) prévoit le paiement par le contribuable d'un intérêt sur tout intérêt en trop qui lui aurait été versé antérieurement ou aurait été imputé à d'autres sommes dues par lui au fisc.

Paragraphe 89(3)

LIR 164(5)

Les modifications apportées au paragraphe 164(5) de la Loi font suite à la prolongation de la période de report aux années antérieures des pertes et à la possibilité nouvelle de reporter sur les années antérieures le crédit d'impôt à l'investisse-

ment et de reporter sur une année antérieure le crédit d'impôt à l'achat d'actions et le crédit d'impôt pour la recherche scientifique. D'après les dispositions actuelles, dans la mesure où le report à une année antérieure d'une perte entraîne un paiement en trop d'impôt, l'intérêt payable sur le paiement en trop est calculé pour la période commençant immédiatement après l'année d'imposition au cours de laquelle la perte a eu lieu. Le paragraphe 164(5) sous sa forme modifiée s'applique lorsqu'une déduction au titre d'un don, de l'exclusion d'un élément du revenu par suite de l'exercice d'un choix, d'une perte, d'un crédit d'impôt à l'investissement ou de la fraction inutilisée d'un crédit d'impôt à l'achat d'actions ou d'un crédit d'impôt pour la recherche scientifique est reportée d'une année d'imposition ultérieure afin de diminuer l'impôt à payer pour une année d'imposition antérieure. Il stipule que, pour calculer l'intérêt à verser sur un paiement d'impôt en trop, la diminution d'impôt entraînée par le report à une année antérieure est réputée avoir eu lieu à la date limite de production de la déclaration d'impôt relative à l'année d'imposition ultérieure ou à sa date de production effective, si celle-ci est postérieure. Cette modification s'applique dans le cas des sommes reportées à partir de l'année d'imposition 1983 ou d'une année subséquente. Toutefois, si la dernière année où un montant a été établi s'est terminée avant le 20 avril 1983, l'intérêt payable sur tout paiement en trop d'impôt qui en résulte sera calculé à partir de la fin de la dernière année.

Paragraphe 89(4)

LIR 164(6)

Le paragraphe 164(6) de la Loi établit des règles spéciales dans le cas où la succession d'une personne décédée subit une perte en capital ou une perte finale lors de la disposition d'un bien au cours de sa première année d'imposition. Dans ce cas, le représentant légal de la personne décédée peut choisir de ne pas tenir compte de la totalité ou d'une partie de la perte en capital (dans la mesure où les pertes en capital de la succession dépassent ses gains en capital pour l'année) ni de la totalité ou d'une partie de la perte finale (jusqu'à concurrence de la perte autre qu'une perte en capital de la succession pour l'année). Ces pertes ne sont alors pas considérées comme des pertes de la succession, de sorte que cette dernière voit porter à son crédit, au titre de ses impôts à payer, le montant dont l'impôt du contribuable décédé aurait été réduit si ces sommes avaient été déductibles pour ce dernier au cours de l'année du décès. Les changements apportés au paragraphe 164(6) font suite aux nouvelles règles relatives aux pertes agricoles à l'article 111. Le paragraphe 164(6) sous sa forme modifiée stipule que, pour les années d'imposition 1983 et suivantes, une perte finale à l'égard de laquelle un choix peut être fait ne doit pas dépasser l'ensemble des pertes autres que les pertes en capital et les pertes agricoles de la succession pour sa première année d'imposition. Étant donné que les pertes agricoles ont été exclues des pertes autres que les pertes en capital, il en résulte un maintien de la règle existante.

Paragraphe 89(5)

LIR 164(7)

Le paragraphe 164(7) de la Loi définit un «paiement en trop» aux fins du calcul du remboursement d'impôt auquel a droit un contribuable, ainsi que des intérêts correspondants. Ce paragraphe est modifié, pour les années d'imposition 1983 et suivantes, pour préciser qu'un paiement en trop doit être calculé sur une base annuelle et à l'égard des impôts à payer en vertu de la Partie I de la Loi.

REVENUE CANADA, TAXATION

INFORMATION CIRCULAR

REVENU CANADA, IMPÔT

CIRCULAIRE D'INFORMATION

SUBJECT: REVISION OF CAPITAL COST ALLOWANCE CLAIMS AND OTHER PERMISSIVE DEDUCTIONS

NO.: 84-1 DATE: July 9, 1984

OBJET: RÉVISION DES RÉCLAMATIONS DE LA DÉDUCTION POUR AMORTISSEMENT ET D'AUTRES DÉDUCTIONS ADMISSIBLES

Nº: 84-1 DATE: le 9 juillet 1984

The guidelines in cancelled IT-112R are now incorporated in this Information Circular. There has been no change in the Department's practice set out in cancelled IT-112R in respect to claims for capital cost allowance or other permissive deductions. The practice is continued without interruption.

1. From time to time, the Department receives requests from taxpayers to permit a revision of capital cost allowance claims for previous taxation years. As well, the situation often arises where a revision results from a reassessment by the Department. The following comments outline the types of revisions that generally occur and the circumstances under which requests for a revision will be accepted by the Department. These comments apply equally to other permissive deductions, such as special mortgage reserves calculated under section 33, scientific research expenditures of a capital nature calculated under paragraph 37(1)(b), or taxable capital gains reserves calculated under subparagraph 40(1)(a)(iii).

2. A reference to the words ''reassessment of tax'' or ''taxes payable'' in this circular includes, in the case of a self-employed individual, a reference to contributions required under the Canada Pension Plan Act.

3. Under paragraph 20(1)(a) of the Income Tax Act a taxpayer has the right to deduct, in computing income for tax purposes, such amounts of capital cost allowance (up to the maximum allowed by regulation) as are desired. Any revision to an amount previously deducted, which the Department may make, as described in 4, 5, 6, 8, 9 and 10 below, will not be made unless the taxpayer makes the request in writing.

Reassessments

4. Where a taxpayer has charged to expense in a year the cost of property which should have been capitalized, that expense will be disallowed to the taxpayer by virtue of paragraph 18(1)(b). In such cases the taxpayer will be allowed, if so desired, to make a revised capital cost

La présente circulaire remplace les observations formulées antérieurement dans le Bulletin d'interprétation IT-112R. Il n'y a eu aucune modification de la pratique du Ministère énoncée dans le Bulletin d'interprétation IT-112R annulé en ce qui concerne les réclamations de la déduction pour amortissement ou d'autres déductions admissibles. La pratique demeure en vigueur sans interruption.

1. De temps à autre, des contribuables demandent au Ministère que soient revues leurs réclamations de déduction pour amortissement d'années d'imposition antérieures. Il arrive souvent aussi qu'une révision découle de l'établissement d'une nouvelle cotisation par le Ministère. Les observations suivantes ont pour objet d'exposer les révisions les plus courantes et les circonstances dans lesquelles les demandes de révision seront acceptées par le Ministère. Ces observations s'appliquent également à d'autres déductions admissibles, commes les réserves spéciales au titre d'une hypothèque, calculées selon les dispositions de l'article 33, les dépenses en immobilisations faites pour recherches scientifiques, calculées selon l'alinéa 37(1)b), et les réserves au titre de gains en capital imposables calculées selon le sous-alinéa 40(1)a)(iii).

2. Les expressions «nouvelle cotisation d'impôt» ou «impôts payables» dont il est fait mention dans la présente circulaire se rapportent également, lorsqu'il s'agit d'un travailleur indépendant, aux contributions requises en vertu de la Loi sur le Régime de pensions du Canada.

3. En vertu de l'alinéa 20(1) de la Loi de l'impôt sur le revenu, un contribuable peut déduire, dans le calcul de son revenu aux fins de l'impôt, les montants de coût en capital qu'il désire réclamer, jusqu'au maximum autorisé par le Règlement. Aucun montant réclamé antérieurement ne fera l'objet d'une révision que le Ministère pourrait faire en vertu des numéros 4, 5, 6, 8, 9 et 10 ci-après à moins que le contribuable n'en fasse la demande par écrit.

Nouvelles cotisations

4. Lorsque, pour une année, un contribuable a imputé aux dépenses le coût d'un bien qu'il aurait dû capitaliser, le contribuable se verra refuser cette déduction en vertu de l'alinéa 18(1)b). Dans ce cas, le contribuable sera autorisé à présenter, s'il le désire, une réclamation révisée de déduction pour amor-

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Canada

allowance claim for the year in order to claim capital cost allowance on the cost of the property that should have been capitalized.

5. Where an upward reassessment of tax is made in a year through adjustments other than those outlined in 4 above, and a taxpayer has not claimed maximum capital cost allowances in all classes in that year, the taxpayer will be advised of the circumstances and allowed, if so desired, to make a revised claim for that year.

6. Where a taxpayer has claimed more capital cost allowance than is permissible for one class of property and less than the maximum allowed for another class, the Department would ordinarily be required to reassess tax on the excess allowance claimed over the maximum for the former class. In these circumstances the taxpayer will be allowed, if so desired, to have some part of the excessive allowance transferred to the latter class.

Errors in classification

7. Where there is a misclassification of depreciable property by a taxpayer, revision of the capital cost allowance schedules will ordinarily be made for all years that can be reassessed within the limitations imposed by subsection 152(4). It should be noted, however, that where depreciable property has been misclassified by a taxpayer or should have, but has not, been reclassified by the taxpayer pursuant to a change in the Act or Regulations, and an allowance in respect of the capital cost of that property has been claimed and allowed under the incorrect class, subsection 13(6) provides that the Minister of National Revenue may direct that, for years prior to the year specified in the direction, the misclassified property be deemed to have been property of the class in which it was originally classified, and then be deemed to have been transferred to its proper class at the beginning of the specified year. Subsection 13(5) sets out the mechanics under which transfers of misclassified property are dealt with in such circumstances and is explained in detail in Interpretation Bulletin IT-190R, "Capital Cost Allowance — Transferred and Misclassified Property."

Property subject to "certification"

8. A taxpayer may acquire depreciable property of one class which after "certification" or "acceptance" by a designated Minister or other body then qualifies for inclusion in another class providing for a faster write-off. For example, a motion picture film otherwise property of class 10(q) becomes property of class 12(n) after certification as a certified feature film. Where this is the case and the taxpayer's year-end intervenes between the date of acquisition of the property and the date "certification" or "acceptance" in respect of that property is given, it is the Department's policy to allow the taxpayer, after the date of certification or acceptance, to treat the property as property of the class providing for the faster write-off, effective from the date of acquisition. The taxpayer may then make revised claims for additional capital cost

tissement pour ladite année afin de réclamer une déduction pour amortissement sur le coût du bien qu'il aurait dû capitaliser.

5. Lorsqu'une nouvelle cotisation d'impôt plus élevée est établie à l'égard d'une année, au moyen d'un redressement autre que celui mentionné au numéro 4, et qu'un contribuable n'a pas réclamé le maximum de déduction pour amortissement dans toutes les catégories pour cette année-là, on informera le contribuable des circonstances et on l'autorisera à présenter, s'il le désire, une réclamation révisée pour ladite année.

6. Si un contribuable a réclamé une déduction pour amortissement d'un montant supérieur à celui qui est permis pour une catégorie de biens et inférieur au maximum permis pour une autre catégorie, le Ministère est habituellement tenu d'établir une nouvelle cotisation d'impôt sur le montant de déduction réclamée en sus du maximum prévu pour la première catégorie. Dans ces circonstances, le contribuable sera autorisé à transférer, s'il le désire, une partie de la déduction excédentaire à la dernière catégorie.

Erreurs de classification

7. Lorsqu'un contribuable classe des biens amortissables dans une mauvaise catégorie, il faut d'ordinaire réviser les tableaux de déduction pour amortissement pour toutes les années qui peuvent faire l'objet d'une nouvelle cotisation, dans les limites imposées au paragraphe 152(4). Toutefois, il faut signaler que si les biens amortissables ont été classés par le contribuable dans une mauvaise catégorie ou auraient dû être reclassés par lui, conformément à un changement dans la Loi ou le Règlement, mais ne l'ont pas été et qu'une déduction pour amortissement de ces biens a été réclamée et admise en vertu d'une catégorie inexacte, le paragraphe 13(6) stipule que le ministre du Revenu national peut ordonner que, pour les années antérieures à l'année précisée dans la directive, les biens classés dans la mauvaise catégorie soient réputés être des biens de la catégorie dans laquelle ils avaient été classés initialement et qu'ils soient réputés avoir ensuite été transférés dans la bonne catégorie au début de l'année précisée. Le paragraphe 13(5) énonce la modalité de transfert des biens classés dans une mauvaise catégorie en pareil cas. Le Bulletin d'interprétation IT-190R, «Déduction pour amortissement — Biens transférés et biens classés par erreur», fournit plus de détails à ce sujet.

Bien assujetti à une «attestation»

8. Un contribuable peut faire l'acquisition d'un bien amortissable appartenant à une catégorie, lequel, après «attestation» ou «autorisation» d'un ministre désigné ou d'un autre organisme, peut alors faire partie d'une autre catégorie, permettant ainsi un amortissement plus rapide (par exemple, un film qui est un bien de catégorie 10q) devient un bien de catégorie 12n) après avoir été désigné comme film long-métrage portant visa). Lorsque ce cas se présente et que la fin de l'année financière du contribuable se situe entre la date d'acquisition et la date d'«attestation» ou d'«autorisation» du bien, c'est la politique du Ministère de permettre au contribuable, après la date d'attestation ou d'autorisation, de considérer le bien comme un bien de la catégorie prévoyant un amortissement plus rapide, à compter de la date de l'acquisition. Le contribuable peut alors faire réviser ses réclamations de déduction supplémentaire pour amortissement à

allowance for all prior taxation years affected that are not statute barred to reassessment, unless the comments in 10 below with regard to statute-barred years apply.

Revisions requested in taxable years

9. If a taxpayer requests a revision of capital cost allowance claimed in a year that was assessable to tax, such requests will be acceded to only if the time has not expired for filing a notice of objection in respect of that year (i.e. 90 days from the day of mailing of the notice of assessment or reassessment for that year) unless the comments in 8 above apply. If, however, circumstances are such that the request for revision of capital cost allowance claimed in a year accompanies a request for an offsetting change in some other ''permissive'' deduction, the result of which is that no change occurs in the assessed tax for that year (or any other year for which the 90 day time-limit has expired), such requests will ordinarily be acceded to.

Revisions requested in non-taxable years

10. Where a taxpayer requests a revision of capital cost allowance claimed in a taxation year for which a notification that no tax is payable had been issued (e.g. because of a non-capital loss in that year, the application of a non-capital loss of another year, or the fact that income was exempt from tax in that year), such request will be allowed provided there is no change in the tax payable for the year or any other year filed, including one that is statute barred, for which the time has expired for filing a notice of objection. Such request will not be allowed, however, where after February 24, 1977 the Minister has issued a notice of determination pursuant to subsection 152(1.1). A taxpayer who wishes to revise the capital cost allowance in a year for which a notice of determination has been issued should do so within 90 days from the day of mailing the notice of determination for that year.

Requests for revision

11. Where a taxpayer wishes to request a revision of prior years' capital cost allowance claims within the limits described above, a letter should be forwarded to the director of the district taxation office in which the taxpayer files income tax returns. This letter should set out the pertinent information concerning the requested revisions along with amended capital cost allowance schedules and any other schedules which are affected by the revision.

Future position of the department

12. In view of the changes to the Income Tax Act by S.C. 1983-84, Chapter 1, the Department will be reviewing the above positions and may announce changes at a later date.

l'égard de toutes les années d'imposition antérieures impliquées qui ne sont pas frappées de prescription par rapport à l'établissement d'une nouvelle cotisation, à moins que les observations faites au numéro 10 ci-après concernant les années frappées de prescription ne s'appliquent.

Révisions demandées à l'égard d'années imposables

9. Si un contribuable demande une révision d'une déduction pour amortissement réclamée dans une année imposable, une telle demande ne sera agréée que si le délai prévu pour produire un avis d'opposition à l'égard de cette année n'a pas expiré (soit avant 90 jours à partir du jour de l'expédition de l'avis de cotisation ou de nouvelle cotisation pour cette année-là), à moins que les commentaires du numéro 8 ne s'appliquent. Toutefois, si la demande de révision de la déduction pour amortissement réclamée dans une année accompagne une demande de changement compensatoire à l'égard d'une autre déduction «admise» et que cette demande n'entraîne aucun changement dans la cotisation d'impôt pour cette année-là (ou toute autre année pour laquelle le délai de 90 jours a expiré), ces demandes seront ordinairement agréées.

Révisions demandées à l'égard d'années non imposables

10. Lorsqu'un contribuable demande une révision d'une déduction pour amortissement dans une année d'imposition pour laquelle a été émis un avis stipulant qu'aucun impôt n'est payable (par exemple, à cause d'une perte autre qu'une perte en capital cette année-là, l'imputation d'une perte autre qu'une perte en capital d'une autre année ou le fait que le revenu était exempté de l'impôt cette année-là), une telle demande sera agréée, à condition qu'elle n'entraîne aucun changement dans la cotisation d'impôt pour l'année ou toute autre année, y compris une année frappée de prescription, pour laquelle le délai de production d'un avis d'opposition a expiré. Cependant, une telle demande ne sera pas agréée si, après le 24 février 1977, le ministre a émis un avis de détermination conformément au paragraphe 152(1.1). Un contribuable qui désire réviser la déduction pour amortissement d'une année pour laquelle un avis de détermination a été émis doit le faire dans un délai de 90 jours à compter de la date d'expédition de l'avis de détermination pour cette année-là.

Demandes de révision

11. Lorsqu'un contribuable désire demander une révision d'une réclamation de déduction pour amortissement d'années antérieures dans les limites mentionnées précédemment, une lettre doit être expédiée au directeur du bureau de district d'impôt où il produit ses déclarations d'impôt sur le revenu. Cette lettre doit renfermer les renseignements pertinents concernant les révisions demandées ainsi que des tableaux modifiés de déduction pour amortissement et tous les autres tableaux qui sont touchés par la révision.

Position du Ministère dans l'avenir

12. Étant donné les modifications qui ont été apportées à la Loi de l'impôt sur le revenu suite au S.C. 1983-84 Chapitre 1, le Ministère révisera les positions énoncées précédemment et il se peut qu'il les modifie à une date ultérieure.

ments that were not paid, but which should have been paid, based on the corporation's actual tax payable for the year. For that purpose, the corporation's tax payable for the year is computed without reference to section 123.3 which provided for a corporate surtax in 1980 and 1981. As a consequence of the repeal of section 123.3, the reference to that section is deleted from subsection 161(4.1), effective on Royal Assent to the enacting legislation.

Subclause 91(3)

ITA 161(7)(b)

Subsection 161(7) of the Act provides that where the tax payable for a year is reduced as a consequence of the carryback of a loss, tax credit or other amount from a subsequent taxation year, interest on any unpaid tax for the earlier year is calculated, without regard to the amount carried back, for the period ending on the later of the day on which the tax return for the subsequent year was required to be filed and the day on which the return was actually filed. Paragraph 161(7)(b) is amended to provide that interest will be charged only until the day on which the taxpayer's return for the subsequent year is filed. Where, however, the taxpayer files his prescribed form claiming a carryback at a later date or the Minister of National Revenue later accedes to the taxpayer's written request to reassess the earlier year, interest will be computed for the period ending on the day on which the form was filed or the request was made. This amendment applies where an amount is carried back from a taxation year ending after 1984.

Subclause 91(4)

This sets the effective date for the amendment to paragraph 161(7)(b) of the Act.

Understatement of Income

Clause 92

ITA 163(2.1)

Subsection 163(2) of the Act imposes a penalty where a taxpayer has made a false statement or omitted information on a return. The penalty is calculated by reference to the amount by which the taxpayer understated his income. Subsection 163(2.1) defines "understatement of income for a year" for this purpose. The amendment to this subsection changes the expression it defines from "understatement of income for a year" to "understatement of income" in order to correspond exactly to the manner in which the term is used in subsection 163(2). This amendment is applicable on Royal Assent to the enacting legislation.

Refunds

Clause 93

Subclause 93(1)

ITA 164(1)(a)

Paragraph 164(1)(a) of the Act authorizes the Minister, on or after mailing the notice of assessment for a year, to refund any overpayment of tax for the

refunds. Subsection 164(4) provided that in certain circumstances the higher prescribed rate was to be paid to compute the amount of interest to be paid on an overpayment of tax. Since the prescribed rate is now the same for all provisions of the Act, this subsection is no longer appropriate and is therefore repealed.

New subsection 164(4) of the Act requires a taxpayer to repay with interest the amount of any interest that had previously been paid to him, or applied by the Minister to another liability, pursuant to subsection 164(3) in respect of a repayment to which the taxpayer is subsequently determined not to be entitled. This new provision is applicable on Royal Assent.

Duty of Minister

Subclause 93(7) and (9)

ITA 164(4.1)

The French version of subsection 164(4.1) which relates to repayments is amended to correct certain inaccuracies. This amendment is applicable on Royal Assent.

Subclause 93(8)

ITA 164(4.1)(d) and (e)

Subsection 164(4.1) of the Act provides that where on the disposition of an appeal of an assessment of tax, interest or penalties a court has ordered the Minister of National Revenue to reassess, the Minister shall with all due dispatch make the reassessment, notwithstanding his intention to appeal the decision of the court. Under paragraph 164(4.1)(e) any overpayment resulting from the reassessment must be refunded, unless the taxpayer has directed the Minister in writing not to make the refund. Paragraphs 164(4.1)(d) and (e) of the Act are amended to provide that if a taxpayer does not wish to receive an immediate refund following a successful appeal he may direct the Minister not to reassess. This amendment applies after February 15, 1984.

Subclause 93(10)

ITA 164(5)

Subsection 164(5) of the Act provides that where the tax payable for a year is reduced as a consequence of the carryback of a loss, tax credit or other amount from a subsequent taxation year, interest payable to a taxpayer on any resulting overpayment of tax is to be calculated as if the overpayment had arisen on the later of the day on which the tax return for the subsequent year was required to be filed and the day on which the return was actually filed. The principal amendment to this subsection provides that interest will be computed on such overpayments from the day on which the taxpayer's return for the subsequent year is filed. Where, however, the taxpayer files his prescribed form claiming a carryback at a later date or the Minister of National Revenue later accedes to the taxpayer's written request to reassess the earlier year, interest will be computed for the period beginning on the day on which the form was filed or the request was made. Certain other amendments are being made to the French version of this subsection to

correct inconsistencies between the French and English versions. The amendments to this subsection apply where an amount is carried back from a taxation year ending after 1984.

Effect of Carryback

ITA
164(5.1)

Subclause 93(11)

New subsection 164(5.1) deals with the interest period in the case of a repayment resulting from a carryback. It provides that to the extent that a repayment under new subsection 164(1.1) or subsection 164(4.1) arises from the carryback of an amount from a subsequent year, such as a loss or an investment tax credit, interest is not payable for any period before the later of two specified dates. Those dates are (i) the due date for the return for the subsequent year and (ii) the date on which the return for the subsequent taxation year is filed. This new subsection is applicable on Royal Assent.

"Overpayment" Defined

ITA
164(7)

Subclause 93(12)

Subsection 164(7) of the Act defined "overpayment" for the purpose of determining the amount of the refund of taxes to which a taxpayer is entitled. The amendment to this subsection extends the definition to include overpayments of interest and penalties as well as any taxes paid under Part I of the Act. This amendment is applicable on Royal Assent.

Subclauses 93(13) to (18)

These set out the effective dates for the amendments to section 164 of the Act.

In Camera Hearings

ITA
179

Clause 94

Section 179 of the Act provides for an automatic entitlement to a hearing in camera in the Federal Court upon the request of the taxpayer. In keeping with the fundamental principle of freedom of the press now contained in the Canadian Charter of Rights and Freedoms, the taxpayer's interests and those of the public at large must be considered in permitting in camera proceedings. Section 179 is amended to allow in camera hearings in the Federal Court, if the taxpayer establishes to the satisfaction of the Court that circumstances justify such a procedure. Section 16 of the Tax Court of Canada Act is also amended to clarify that the onus on the taxpayer is to justify that such proceedings are appropriate in the circumstances. The amendments are effective on Royal Assent to the enacting legislation.

No Reasonable Grounds for Appeal

ITA
179.1

Clause 95

New section 179.1 provides a penalty where an appeal is groundless and was instituted for the purpose of deferring taxes. On the application of the Minister, the Tax Court of Canada or the Federal Court – Trial Division is

prévoit un amendement précisant la date d'application d'une modification récente apportée au paragraphe 161(1) de la loi. Les notes concernant cet article renferment plus de détails. L'amendement apporté au paragraphe 161(2), qui s'applique à la date de sanction du projet de loi, a pour objet de rendre la rédaction du paragraphe conforme à celle des autres dispositions de la loi qui traitent du taux d'intérêt prescrit.

Paragraphe 91(2)

LIR
161(4.1)a)

Le paragraphe 161(4.1) de la loi limite les intérêts exigés sur les acomptes provisionnels insuffisants d'une corporation pour une année d'imposition aux intérêts calculés sur les acomptes provisionnels qui n'ont pas été payés mais qui, d'après l'impôt réel à payer par la corporation pour l'année, auraient dû l'être. À cette fin, l'impôt payable par la corporation pour l'année est calculé sans tenir compte de l'article 123.3 qui prévoyait, en 1980 et 1981, une surtaxe sur le revenu des corporations. En raison de l'abrogation de l'article 123.3, le renvoi à cet article est supprimé du paragraphe 161(4.1) à partir de la date de sanction du projet de loi.

Paragraphe 91(3)

LIR
161(7)b)

Selon le paragraphe 161(7) de la loi, si l'impôt payable pour une année est réduit par suite du report d'une perte, d'un crédit d'impôt ou d'un autre montant sur une année antérieure, les intérêts sur tout impôt impayé pour cette année antérieure sont calculés, sans tenir compte du montant du report, pour la période se terminant à la date d'échéance de production de la déclaration d'impôt pour l'année ultérieure ou à la date effective de production de la déclaration, si cette date est postérieure à l'autre. Selon l'amendement apporté à l'alinéa 161(7)b), les intérêts ne sont exigés que pour la période se terminant à la date de production de la déclaration du contribuable pour l'année ultérieure. Toutefois, lorsque le contribuable produit, à une date ultérieure, un formulaire prescrit pour demander un report rétrospectif ou que le ministre du Revenu national accède à la demande écrite du contribuable d'établir une nouvelle cotisation pour l'année antérieure, les intérêts sont calculés pour la période se terminant à la date de production du formulaire ou d'envoi de la demande. Cet amendement s'applique dans le cas où un montant est reporté d'une année d'imposition se terminant après 1984.

Paragraphe 91(4)

Ce paragraphe fixe la date d'entrée en vigueur de l'amendement apporté à l'alinéa 161(7)b) de la loi.

Revenu déclaré en moins

Article 92

LIR
163(2.1)

Une pénalité est imposée en vertu du paragraphe 163(2) de la loi lorsqu'un contribuable a fait un faux énoncé ou une omission dans une déclaration.

Paragraphe 93(10)

LIR
164(5)

Selon le paragraphe 164(5) de la loi, si l'impôt payable pour une année est réduit par suite du report d'une perte, d'un crédit d'impôt ou autre montant sur une année d'imposition antérieure, les intérêts à payer à un contribuable sur tout paiement d'impôt en trop qui découlerait du report sont calculés comme si le paiement en trop s'était manifesté à la date d'échéance de production de la déclaration pour l'année ultérieure ou à la date effective de production de la déclaration, si cette date est postérieure à l'autre. Le principal amendement apporté à ce paragraphe porte que les intérêts sont calculés sur ces paiements en trop à partir de la date de production de la déclaration du contribuable pour l'année ultérieure. Toutefois, lorsque le contribuable produit, à une date ultérieure, un formulaire prescrit pour demander un report rétrospectif ou que le ministre du Revenu national accède à la demande écrite du contribuable d'établir une nouvelle cotisation pour l'année antérieure, les intérêts sont calculés pour la période commençant à la date de production du formulaire ou d'envoi de la demande. Certains autres amendements sont apportés à la version française de ce paragraphe en vue de corriger les divergences entre les versions anglaise et française. Les amendements apportés à ce paragraphe s'appliquent dans le cas où un montant est reporté d'une année d'imposition se terminant après 1984.

Effet du report

Paragraphe 93(11)

LIR
164(5.1)

Le nouveau paragraphe 164(5.1) proposé fixe la période où un intérêt est payable à un contribuable lorsqu'un report rétrospectif donne lieu à un remboursement. Il prévoit en effet que dans la mesure où le remboursement d'une somme en litige en vertu du nouveau paragraphe 164(1.1) ou du paragraphe 164(4.1) découle du report d'un montant d'une année ultérieure, comme une perte ou un crédit d'impôt à l'investissement, aucun intérêt n'est payable au contribuable pour toute période antérieure à la dernière des deux dates suivantes: la date d'échéance de production de la déclaration pour l'année ultérieure et la date effective de production de la déclaration pour l'année d'imposition ultérieure. Ce nouveau paragraphe s'applique à la date de sanction du projet de loi.

«Paiement en trop»

Paragraphe 93(12)

LIR
164(7)

Le paragraphe 164(7) de la loi définit l'expression «paiement en trop» aux fins du calcul du remboursement d'impôt, et des intérêts y afférents, auquel le contribuable a droit. L'amendement apporté à ce paragraphe étend l'application de la définition aux paiements en trop d'intérêts et pénalités et de tout impôt payé en vertu de la partie I de la loi. L'amendement s'applique à la date de sanction du projet de loi.

Paragraphes 93(13) à (18)

Ces paragraphes fixent la date d'entrée en vigueur des amendements apportés à l'article 164 de la loi.

In the Court of Appeal of Alberta

Citation: Alberta (Provincial Treasurer) v. Methanex Corporation, 2004 ABCA 304

Date: 20041007
Docket: 0301-0222-AC
Registry: Calgary

In the Matter of an Appeal Pursuant to Section 50 of the
Alberta Corporate Tax Act, R.S.A. 1980, Chapter A-17

Between:

The Provincial Treasurer

Appellant

- and -

Methanex Corporation

Respondent (Appellant)

The Court:

The Honourable Madam Justice Ellen Picard
The Honourable Madam Justice Adelle Fruman
The Honourable Madam Justice Marina Paperny

Memorandum of Judgment
Delivered from the Bench

Appeal from the Judgment by
The Honourable Mr. Justice LoVecchio
Dated the 14th day of February, 2003
Filed on the 28th day of July, 2003
(2003 ABQB 157, Docket: 9901-19659)

amended return or a request in writing is always required, and s. 39(b)(iii) or 39(b)(iv) will be the latest date, except on the rare occasion a request is made before the end of a taxpayer's tax year or before its return is filed.

[10] The Provincial Treasurer's interpretation is premised on its assertion that a loss carry-back can never be applied by the Provincial Treasurer without an amended return or a request from a taxpayer. The chambers judge rejected this argument, primarily because it is inconsistent with the clear wording of the *Act*, in particular s. 43: at paras. 15 - 22. We agree with the chambers judge's analysis. Section 43(1.2), as it read at the time in question, permitted the Provincial Treasurer to reassess after a federal tax reassessment had been made. No request from a taxpayer was required. The section was broad and would seem to apply to any federal tax reassessment, including one that gave effect to a loss carry-back under s. 111 of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c.1, as amended.

[11] This interpretation is borne out by the Provincial Treasurer's conduct in this case. After learning of the first federal reassessment, the Provincial Treasurer applied loss carry-backs, even though Methanex did not request this or file an amended return. To the contrary, Methanex indicated it would object to the federal reassessment.

[12] We therefore do not accept the Provincial Treasurer's interpretation of s. 39(3)(b). In our view, the section is plain and unambiguous. It means that the effective date for the application of a loss carry-back is the latest of the four stated dates. Similarly, s. 39(3)(b)(iv) is plain and unambiguous. It applies if the following requirements are met:

> (i) a request for a reassessment was made by the taxpayer;
>
> (ii) the request was made in writing (prior to the 1995 amendment); and
>
> (iii) the reassessment came about as a result of the request, that is to say there is a strong causal connection between them.

If these requirements are not met, some other clause must apply, in this case, s. 39(3)(b)(ii).

[13] As we accept the chambers judge's interpretation of s. 39(3)(b), it follows that the selection of the appropriate clause turns on the facts. A palpable and overriding error must be demonstrated to warrant interference with the chambers judge's fact findings: ***Housen* v. *Nikolaisen***, [2002] 2 S.C.R. 235 at para. 10. The Provincial Treasurer has not shown such an error.

[14] In the case of the first reassessment, the chambers judge found no evidence Methanex authorized or requested application of the loss carry-backs, and no evidence of a written request: at para. 26. These conclusions are fully supported by the evidence.

Methanex Corporation v. Alberta (Provincial Treasurer), 2003 ABQB 157

Date: 20030214
Action No. 9901-19659

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

METHANEX CORPORATION

Appellant

- and -

THE PROVINCIAL TREASURER

Respondent

REASONS FOR JUDGMENT
of the
HONOURABLE MR. JUSTICE SAL J. LoVECCHIO

APPEARANCES:

Mr. Joseph M. Steiner and Mr. Andrew D. Little of Osler, Hoskin & Harcourt LLP
for the Appellant

Mr. Lionel Whittaker
for the Respondent

INTRODUCTION

[1] Methanex Corporation (formerly Ocelot Industries Ltd.) appeals the Provincial Treasurer's several reassessments of tax and interest under the ***Alberta Corporate Tax Act***[1] for its 1988 taxation year. The reassessments arose from a February 1994 Federal Income Tax

[1] R.S.A. 1980, c. A-17

48(4)(b) to respond to an objection is suspended until any underlying Federal dispute is resolved. Nonetheless, a response to the Notice of Objection was required, and the reassessment produced on May 23, 1997 also stated that it was "issued in accordance with section 48(4)(b) of the [Act]".

[29] Methanex argues that because of this, the third reassessment could not have been issued "as a consequence of" the May 8, 1997 telephone request of Methanex. While I agree that the third reassessment discharges Alberta Treasury's duty to respond to the Notice of Objection, I also agree with counsel for Alberta Treasury that the single document may have served two purposes. However, as I have already noted, the defining feature is what *ultimately* caused the reassessment to occur. For the reasons already stated, when the government is in control of the timing of events leading to a loss carry-back, s. 39(3)(b)(ii) properly applies.

[30] Counsel for Alberta Treasury says Methanex wants not only the cake but to eat it as well. In some ways that is true. On the other hand, Methanex is in a difficult position. It had losses for 1989 and 1990 and until sometime in 1994 was unaware of the new circumstances it would face for 1988.

[31] It may be Alberta Treasury also wants not only the cake but to eat it as well. Alberta Treasury wants to collect interest on the 1988 reassessment back to the date when the return was filed namely June of 1989. It does not want Methanex to be able to utilize its 1989 and 1990 losses until some time after 1994. I guess in this case it all about perspective.

[32] The conclusion I have reached maintains a balance between the parties, so that the taxpayer will continue to have an incentive to avoid possible interest penalties associated with claims inappropriately made that are later reassessed, while the authorities are not granted the opportunity to benefit from their own delays in auditing or reassessing taxpayers' returns.

CONCLUSION

[33] The appeal is allowed and the matter is remanded to the Provincial Treasury to be dealt with in accordance with these reasons. The effective dates for the 1989 and 1990 loss carry-backs should be determined as requested by Methanex in its brief, specifically, the amounts carried back should be made effective on the dates the respective tax returns were filed. As it happens, this remedy conforms with the settlement reached between Methanex and the Federal Government.

HEARD on the 18th day of December 2002.
DATED at Calgary, Alberta this 14th day of February, 2003.

J.C.Q.B.A.

SUPREME COURT OF CANADA

CITATION: Deans Knight Income Corp. *v.* Canada, 2023 SCC 16

APPEAL HEARD: November 2, 2022
JUDGMENT RENDERED: May 26, 2023
DOCKET: 39869

BETWEEN:

Deans Knight Income Corporation
Appellant

and

His Majesty The King
Respondent

- and -

Attorney General of Ontario, Canadian Chamber of Commerce, Tax Executives Institute, Inc., and Agence du Revenu du Québec
Interveners

CORAM: Wagner C.J. and Karakatsanis, Côté, Brown,* Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ.

REASONS FOR JUDGMENT: (paras. 1 to 141)
Rowe J. (Wagner C.J. and Karakatsanis, Martin, Kasirer, Jamal and O'Bonsawin JJ. concurring)

DISSENTING REASONS: Côté J.
(paras. 142 to 197)

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* Brown J. did not participate in the final disposition of the judgment.

corporation can no longer be understood as the same taxpayer for the purpose of carrying over losses from the corporation's prior operations.

(b) *Section 111(5) Delineates the Boundaries of the Benefit-Conferring Provision, Section 111(1)(a)*

[86] Section 111(5) operates within a scheme for carrying over non-capital losses. The foundational provisions of the Act recognize that each taxpayer is taxed based on their income and losses within a single taxation year; however, s. 111(1)(a) modifies this general rule and provides that a taxpayer can deduct non-capital losses against income in a future or prior taxation year. It served as the benefit-conferring provision which the appellant relied on to obtain its tax benefits. Without such a loss carryover rule, a taxpayer who earns high income in one year and suffers a loss in the next would face financial hardship as a result of paying tax in the first year without relief in the second (Krishna, at p. 595). The taxpayer with fluctuating income is disadvantaged compared with the taxpayer who engages in a less risky venture, paying tax over time on a more stable income.

[87] From this perspective, s. 111(5) does not operate independently, but rather serves to complement s. 111(1)(a). There is sound logic behind the ability to carry over one's losses. However, the specific purpose of s. 111(1)(a) has always been to more accurately measure income and provide relief to the individual taxpayer, accounting for fluctuating income over a period of multiple years. Amendments to this provision have broadened the ability to deduct non-capital losses (see, e.g., S.C. 1958, c. 32,

s. 12(1), amending s. 27(1)(e) of the *Income Tax Act*, R.S.C. 1952, c. 148), but never so as to benefit a new taxpayer who did not themselves generate the losses. Only the taxpayer who *suffered the loss* is entitled to deduct the loss.

[88] Section 111(5) ensures that this principle is given effect for corporations. While the corporation is still the same legal person after an acquisition of control, the identity of those *behind* the corporation has changed. Section 111(5) functions so that the tax benefits associated with those losses will not benefit a new shareholder base carrying on a new business.

[89] This restriction on s. 111(1)(a) promotes consistency with other provisions within the scheme for computing income tax. In particular, s. 249(4) specifies that when an acquisition of control occurs, the corporation's taxation year is deemed to have ended and a new taxation year commences. Thus, an acquisition of control severs the link between the corporation's prior and post-acquisition operations. It would be incongruous with several other provisions if the Act nevertheless allowed this corporation to carry forward past losses as if the link had not been severed.

[90] Thus, s. 111(5) serves to delineate the boundaries of s. 111(1)(a) and to promote consistency with other provisions which treat the corporation as, effectively, a new taxpayer following an acquisition of control (Li (2021), at p. 314; Strain, Dodge and Peters, at pp. 4:52-54).

(c) *Parliament's Selection of Control Tests Differs Across the Act*

SUPREME COURT OF CANADA

CITATION: Dow Chemical Canada ULC *v.* Canada, 2024 SCC 23

APPEAL HEARD: November 9, 2023
JUDGMENT RENDERED: June 28, 2024
DOCKET: 40276

BETWEEN:

Dow Chemical Canada ULC
Appellant

and

His Majesty The King
Respondent

CORAM: Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ.

REASONS FOR JUDGMENT: (paras. 1 to 122) Kasirer J. (Martin, Jamal and O'Bonsawin JJ. concurring)

DISSENTING REASONS: (paras. 123 to 224) Côté J. (Karakatsanis and Rowe JJ. concurring)

> 58(1). Any person who objects to the *amount* at which he is assessed . . .
>
> Under these provisions, there was no assessment if there was no tax claimed. Any other objection but one ultimately related to an amount claimed was lacking the object giving rise to the right of appeal from the decision of the Minister to the Board. [Underlining added; pp. 825-26.]

[45] In preparing an assessment, the Minister's role is simply to determine what the law requires the taxpayer to pay "by applying a fixed statutory formula to the amount of the person's taxable income for that year, and the amount of a person's taxable income is a function of the events that occurred before the end of that year" (*Addison & Leyen Ltd. v. Canada*, 2006 FCA 107, [2006] 4 F.C.R. 532, at para. 38, rev'd on other grounds 2007 SCC 33, [2007] 2 S.C.R. 793 ("*Addison SCC*"); see also *Anchor Pointe Energy*, at para. 33, cited by Webb J.A., at para. 74). In other words, the tax owing is understood as resulting from rules in the *ITA* by operation of law (see *Ereiser v. Minister of National Revenue*, 2013 FCA 20, 444 N.R. 64, at para. 31; *Main Rehabilitation*, at para. 8). This is in keeping with the Court's judgment in *Okalta Oils*.

[46] Plainly, when preparing an assessment, the Minister does not exercise any discretion. As Stratas J.A. explained, "[w]here the facts and the law demonstrate liability for tax, the Minister must issue an assessment" (*JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250, [2014] 2 F.C.R. 557, at para. 77; see also *Ludmer v. Canada*, [1995] 2 F.C. 3 (C.A.), at p. 17). As Professor Annick Provencher has observed, "a discretionary decision of the minister could undergo judicial review. However, assessments do not generally require such

discretion" ("Fifty Years of Taxation at the Federal Court of Appeal and the Federal Court", in M. Valois et al., eds., *The Federal Court of Appeal and the Federal Court: 50 Years of History* (2021), 543, at p. 551). Indeed, this Court has confirmed that the Minister's preparation of an assessment is not an exercise of discretion because "taxpayers should have confidence that the Minister is administering and enforcing the same tax laws in the same way for everyone" (*Collins Family Trust*, at para. 25). While the *ITA* empowers the Minister to exercise discretion in some matters, including over whether to issue downward transfer pricing adjustments under s. 247(10), these discretionary decisions are not assessments nor are they part of assessments. When the Minister makes discretionary decisions, she provides her opinion, guided by policy considerations. This is a task that is fundamentally different than the non-discretionary act of preparing an assessment. Accordingly, when a court reviews the Minister's opinion reflecting these policy considerations, it should do so on the basis of reasonableness rather than the statutory standard of *de novo* correctness that applies to assessments.

[47] The Tax Court's jurisdiction under s. 169 of the *ITA* is thus limited to reviewing the correctness of assessments, which as I will explain, it does through a statutory *de novo* review process. Since assessments are non-discretionary acts by the Minister, "[i]t is trite to say . . . that [the Tax Court] is not a court of equity with jurisdiction to review the Minister's discretionary decisions" (*Fazal v. R.*, 2020 TCC 137, [2021] G.S.T.C. 5, at para. 30; see also *Azzopardi v. The King*, 2023 TCC 51, [2023] 4 C.T.C. 2049, at para. 33; *Callahan v. The King*, 2023 TCC 172, [2024] 2

C.T.C. 2001, at para. 27). The question on an appeal of an assessment to the Tax Court is not about the conduct of the Minister in preparing the assessment, but rather about the correctness of the Minister's determination of the amount of tax owing, applying the rules in the *ITA* to the facts as she finds them.

[48] The Tax Court's jurisdiction over the correctness of assessments includes matters such as the validity of assessments and the admissibility of evidence in support of assessments. While the Tax Court's jurisdiction is limited to reviewing the correctness of the product of the assessments, certain procedural defects — those that result only in an incorrect assessment — can be "cured" because the Tax Court will perform a *de novo* review of the assessment. This led Stratas J.A. to observe that "[t]o the extent the Minister ignored, disregarded, suppressed or misapprehended evidence, an appeal under the general procedure in the Tax Court is an adequate, curative remedy" (*JP Morgan*, at para. 82). But he recalled that "[t]he Tax Court does not have jurisdiction on an appeal to set aside an assessment on the basis of reprehensible conduct by the Minister leading up to the assessment, such as abuse of power or unfairness", therefore in such a circumstance, "the bar in section 18.5 of the *Federal Courts Act* against judicial review in the Federal Court does not apply" (para. 83). Stratas J.A.'s view is reflected in this Court's reasons in *Addison SCC*, at para. 8:

> It is not disputed that the Minister belongs to the class of persons and entities that fall within the Federal Court's jurisdiction under s. 18.5. Judicial review is available, provided the matter is not otherwise appealable. It is also available to control abuses of power, including abusive delay. Fact-specific remedies may be crafted to address the wrongs or problems raised by a particular case. [Emphasis added.]

tax liability under either of these provisions. Other provisions involving joint and several liability (for example, section 227) do not have any cap, and thus do not require amendment.[85]

Effects of Adjustments to Tax Returns

Tax returns may be varied for a number of reasons, as has been discussed above. The taxpayer may identify an additional deduction after the fact and request that the minister amend a return to take it into account. The taxpayer may have tax attributes in a subsequent year that can be carried back to an earlier year. And, commonly, a reassessment of one taxation year to increase taxable income will result in the taxpayer seeking to increase discretionary deductions in that year or another year or to carry over losses from another year to offset the tax owing as a result of the reassessment. Depending on the particular circumstances, the amount of interest arising from the adjustment can vary significantly.

Where the taxpayer adjusts discretionary deductions in the same year to offset a reassessment, the CRA will not seek to collect any interest. However, if this results in adjustments to other years, interest may arise as a result of those adjustments.

Where on a reassessment of a taxation year a taxpayer applies losses or other attributes arising in an earlier year to offset tax arising on the reassessment, the appropriate result appears to be that no interest should arise.[86] This outcome is logical from a policy perspective, given that the taxpayer will not have achieved any time value of money benefit if the tax attribute arose prior to the tax to which it is to be applied. It also is consistent with the wording of subsection 161(7), which allows interest to be levied where a variety of tax attributes are carried back but not where they are carried forward.[87]

Where the taxpayer carries back losses or other tax attributes from a subsequent year to an earlier year, subsection 161(7) provides that interest in respect of the earlier year will be charged from the relevant commencement date until 30 days after the latest of (1) the end of the subsequent year, (2) the day on which the tax return for the subsequent year is filed, and (3) the day on which the form amending the earlier year in accordance with subsection 152(6) is filed.[88] The same provision applies to requests for adjustment to returns, with the date on which the request for reassessment of the earlier year being added to the list of stop dates for interest computation.[89] Likewise, the provision applies in the context of subsection 49(4) and paragraph 164(4)(c) filings.[90] The CRA's administrative position is that an adjustment to a return in respect of which no tax was payable to substitute the use of a tax attribute arising in a later year where, following the adjustment, no tax remains payable does not give rise to interest.[91] The CRA also generally accepts that where a taxpayer carries back losses from a subsequent year and indicates that it wants to offset income arising in a prior year, where there are sufficient losses this will prevent the incurring of additional interest in circumstances where the earlier year's income is subsequently adjusted upward on a reassessment.[92]