

**BILL C-22: AN ACT TO AMEND THE INCOME TAX ACT
AND RELATED STATUTES**

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LEGISLATIVE HISTORY OF BILL C-22

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 21 March 2001
Second Reading: 23 April 2001
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Report Stage: 11 May 2001
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SENATE

Bill Stage	Date
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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-22:
AN ACT TO AMEND THE INCOME TAX ACT AND RELATED STATUTES*

OVERVIEW

Bill C-22, the Income Tax Amendments Act, 2000, introduces many of the proposals put forth by the government in its February 2000 budget and the subsequent economic statement and budget update in October 2000. It also reintroduces a variety of measures originally included in Bill C-43, which received first reading in September 2000, but died on the *Order Paper* with the calling of the November 2000 general election.

Most of the bill proposes changes to the *Income Tax Act*. These include significant cuts to personal income tax rates, and to the capital gains inclusion rate. It also proposes a number of changes to various tax-credit plans, and introduces more favourable treatment of stock options. On the business side, a significant number of amendments address the taxation of trusts, the treatment of foreign banks in Canada, and resource tax credits.

The Bill also includes a large number of minor and technical amendments, including minor amendments to other Acts. These are listed at the end of the legislative summary.

This legislative summary draws from the summary of Bill C-22 provided by the Department of Finance. It is organized by major budgetary initiative, rather than a chronological exposition of the Bill.

* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

SUMMARY OF MAJOR AMENDMENTS

1. Five-Year Tax-Reduction Plan:

- a. Reduce tax rates at all income levels (clause 92; consequential amendments: clauses 108, 120).

Year 2000	Applies to income between	Year 2001	Applies to income between
17%	\$0-\$30,004	16%	\$0-\$30,754
25%	\$30,004-\$60,009	22%	\$30,754-\$61,509
29%	\$60,009+	26%	\$61,509-\$100,000
		29%	\$100,000+

At the end of the five-year period, the income thresholds will not be less than \$35,000, \$70,000 and \$113,804, respectively, regardless of the annual increase provided for by indexation.

- b. Eliminate the 5% deficit reduction surtax as of January 2001 (clauses 160-161; consequential amendments: clauses 148, 152, 157).
- c. Increase support for families through the Canada Child Tax Benefit (clauses 109, 110).
- d. Reduce the capital gains inclusion rate (clauses 5, 6, 7, 13, 16, 22-24, 26, 36, 38, 58, 59, 61, 67, 70, 73, 74, 76-78, 80, 84, 86-88, 91, 119, 127-129, 134, 156, 177, 187, 250)
 - The 2000 budget promised a reduction in the capital gains inclusion rate from three-quarters to two-thirds effective 28 February 2000, while the budget update further reduced the rate to one-half effective 18 October 2000. Bill C-22, through many proposed amendments to many parts of the *Income Tax Act*, would implement these changes.
- e. Provide a tax-deferred capital-gains rollover for investments in shares of certain small- and medium-sized active business corporations (clauses 28, 29, 52).
- f. Provide a tax-deferred rollover for shares received on certain foreign spin-offs (clauses 63-65, 73, 74, 83, 169).
- g. Stock Options (clauses 2, 32, 36, 84; 31, 78, 87, 90, 122)

The new legislation proposes to:

- Defer the taxation of certain (employee) stock option benefits acquired after 27 February 2000. Under the proposed changes, employees will be able to defer the

income inclusion from exercising employee stock options for publicly listed shares until the disposition of the shares, subject to a \$100,000 annual vesting limit. Employers will not be required to track disposition of shares acquired under a stock option plan. The deadline for this is 60 days after the legislation providing the deferral receives Royal Assent.

- Allow an additional deduction for certain stock option shares donated to charity.

2. Child Care Expense Deduction (clause 42)

- Increase the maximum annual amount deductible for child care expenses for each eligible child for whom the disability tax credit may be claimed to \$10,000 from \$7,000.

3. Disability Tax Credit (clauses 96 and 97)

- Extends the disability tax credit to individuals who, but for extensive therapy, would be markedly restricted in their activities of daily living;
- Provides a supplement for disabled children under the age of 18 years;
- Extends the transferability of the credit to most relatives of a disabled person; and
- Starting in 2001, increases the amounts on which the credit and the new supplement are calculated to \$6,000 and \$3,500 from \$4,293 and \$2,941, respectively.

4. Caregiver and Infirm Dependant Tax Credits (clauses 93, 43, 98)

- Increases the amount on which each of these credits is calculated to \$3,500 from \$2,446, and expands it to allow a taxpayer to claim the tax credit for such relatives of the taxpayer's spouse or common-law partner.
- Expands the list of eligible sources of income; extends the deduction up to a maximum of \$10,000 to an individual who incurs attendant care expenses to attend a designated educational institution or high school.

5. Medical Expense Tax Credit (clause 95)

- Includes reasonable incremental costs relating to the construction of the principal place of residence of an individual who lacks normal physical development or has a severe

and prolonged ability impairment to enable the individual to gain access to, or to be mobile within, the residence.

6. Donations of Ecological Gifts (clauses 22, 27, 31, 85, 94, 158, 159, 170)

- Halves the normal capital gains inclusion (to one-quarter) for an ecological gift the value of which has been certified by the Minister of the Environment; and clarifies rules for calculating any capital gain or loss realized as a result of such a gift.
- In addition to its rules related to the donation of ecologically sensitive lands, clause 94 also proposes amendments regarding charitable gifts in general (e.g., charitable donations, gifts to the Crown and certain gifts of cultural property). Specifically, it proposes extending the charitable donations tax credit to eligible transfers under a life insurance policy or from an RRSP or a registered retirement income fund (other than a plan or fund of which a “license annuities provider” is the issuer or carrier) made as a consequence of a qualified donee being named a beneficiary. As a result, the credit can be claimed on an individual’s death as a consequence of transfers to qualified donees.

7. Scholarships, Fellowships and Bursaries (clause 39)

- Increases the exemption for scholarships, fellowships and bursaries received by a taxpayer in connection with the taxpayer’s enrolment in a program for which the taxpayer may claim the education tax credit, from \$500 to \$3,000.

8. Education Tax Credit (clauses 98, 99, 101)

- Doubles the monthly amounts on which the credit allowed to full-time and part-time students is based, to \$400 and \$120, respectively.

9. Clergy Residence Deduction (clause 3)

- Provides clearer rules for determining the amount deductible for a clergy’s residence, limiting this deduction, in the case where the clergy person provides his or her own residence to: the lesser of the clergy person’s total remuneration from the office or employment; one-third of that total remuneration or \$10,000, whichever is greater; and the fair rental value of the residence (reduced by other amounts deducted in connection

with the same residence). These rules are to apply to the 2001 and subsequent taxation years.

10. CPP/QPP Contributions on Self-Employed Earnings (clauses 41, 100)

- Introduces a deduction from business income for one-half of CPP/QPP contributions on self-employment earnings, with the other half of the contributions remaining eligible for the CPP/QPP tax credit.

11. Thin Capitalization (clause 9)

- Amends the provisions to have the debt-to-equity ratio calculated on an averaged basis, reduces the acceptable debt-to-equity ratio to 2:1 from 3:1, and repeals the exemption for manufacturers of aircraft and aircraft components.

12. Non-Resident-Owned Investment Corporations (clauses 131 and 132)

- Phases out, over a three-year period, the special income tax regime for this type of corporation.

13. Weak Currency Debt (clauses 9, 14)

- Limits the deductibility of interest expenses and adjusts foreign exchange gains and losses for weak currency debts and associated hedging transactions.

14. Government Assistance – SR&ED (clause 118)

- Categorizes, as government assistance, provincial deductions for SR&ED that exceed the amount of the SR&ED expenditures.
- Clause 21 provides for the reduction of a corporation's SR&ED pool for a taxation year by its super-allowance benefit amount for the year and preceding taxation years.

15. Foreign Tax Credits – Oil and Gas Production Sharing Agreements (clause 117)

- Clarifies the eligibility for a business foreign tax credit of certain payments made by Canadian resident taxpayers to foreign governments on account of levies imposed in connection with production sharing agreements.

- Clause 5 ensures that any “production tax amount” of the taxpayer for a “foreign oil and gas business” is included in computing the taxpayer’s income.

16. Foreign Exploration and Development Expenses (FEDE)

(clauses 44, 47, 49, 86, 87, 90, 117, 188)

- Amends the rules to require that the FEDE of a claimant must relate to either foreign resource property acquired by the claimant or be made for the purpose of enhancing the value of foreign resource property owned, or to be owned, by the claimant.
- Ensures appropriate treatment of FEDE in computing foreign tax credits.
- Imposes a 30% restriction for the annual deduction of new FEDE balances.
- Clause 47 proposes rules governing foreign resource expenses (FRE), defined essentially the same way as the FEDE, except there are separate FRE accounts for each country to which FRE relates. FRE is explicitly excluded from the amended definition of FEDE. Subsection 66.21(4) permits a deduction for a taxpayer’s cumulative FRE for each country. The limit of the deduction is not less than 10% of the taxpayer’s cumulative FRE for the country at the end of the taxation year, and is not more than the full amount of the balance. Consequential amendments are found in clauses 13, 15, 20, 36, 40, 44, 49, 50, 52, 58, 65, 66, 74, 78, 86, 87, 90, 117, 119, 188.

17. Flow-Through Share Investment Tax Credit (clause 118)

- Introduces a temporary 15% investment tax credit for certain “grass roots” mineral exploration. These include expenses incurred in determining the “existence” or “location,” and the “extent” or “quality,” of a mineral resource (clause 45).

18. Foreign Branch Banking

- Provides amendments to the *Income Tax Act* to accommodate branches of foreign banks operating in Canada (clauses 14, 19, 90, 117, 169, 137, 151, 153, 173, 176, 184, 188, 190).
 - These include extended provisions relating to eligible Canadian affiliates and foreign mergers, extended exclusion of benefit and deemed disposition provisions, more extensive reserve continuity, extension of the deadlines for conversion relief,

relaxation of the requirement that dissolution be completed before losses of a regulated entity can be accessed, and more explicit stop-losses provisions (clause 138).

- It also proposes amendments relating to OSFI-filed financial statements, use of OSFI-filed financial statements for computation of income, exemption from the certificate requirement on the sale of taxable Canadian property, pro-rating of the capital tax base based on the proportion of Canadian assets, exclusion from foreign property treatment, and exclusion of representative offices from the scope of “Canadian banking business” (clauses 163, 165-167, 168).
- These proposed changes are designed to make Canada’s taxation of commercial-focused foreign-bank branches broadly comparable to the taxation of Canadian banks (clauses 9, 87).
- The bill also includes incidental proposals in other tax areas, including a proposal that foreign currency deposits be permitted investments for Registered Retirement Savings Plans and other deferred-income plans (clauses 139-142).

19. Capital Dividend Account (clause 67)

- Permits amounts distributed to a corporation from a trust for capital gains or capital dividends realized or received by the trust to be included in the corporation’s capital dividend account.

20. Taxpayer Migration (clauses 52, 79, 123-125, 54, 102, 117, 130, 149, 150, 154-156, 160, 161, 178)

- Enhances Canada’s ability to tax the gains accrued by emigrants while they were resident in Canada.
- Several amendments also adjust the rules concerning non-residents’ taxable activities in Canada (clauses 4, 7 (consequential amendments: clauses 57, 62, 74, 75), 8, 25 (consequential amendments: clauses 128, 129, 177, 249), 30, 36, 56, 57, 73, 90, 147, 149, 191).

- Clause 89 proposes amendments to the rules governing the calculation of the taxable income of a part-year resident of Canada (consequent amendments are proposed in clauses 86, 87, 106, 117, 18).
- Clause 178 proposes rules allowing an individual to defer payment of tax owing due to the disposition of a particular property by providing appropriate security in lieu of the tax. If this is done, interest does not start to accrue on the amount secured until the amount becomes unsecured.

21. Trusts

- A large number of the proposed amendments in Bill C-22 address the tax treatment of trusts. The most significant changes are outlined below.
- Proposed amendments related to the tax treatment of property distributed from a Canadian trust to a non-resident beneficiary are found in clauses 80 ss. 107(5), 83, 150, 169, 171, 172, 178. Clause 150 extends the normal reassessment period under s. 152(3.1) for certain trust distributions of taxable Canadian property to non-resident beneficiaries.
- Several clauses address the tax treatment of property distributed from trusts to their beneficiaries (clauses 36, 72, 78, 80) and the taxation in Canada of income earned by a non-resident trust deemed resident in Canada.
- Clause 178 proposes rules allowing a trust to defer payment of tax owing due to the disposition of a particular property by providing appropriate security in lieu of the tax. If this is done, interest does not start to accrue on the amount secured until the amount becomes unsecured.
- Bill C-22 proposes new measures dealing with the tax treatment of:
 - a. bare, protective and similar trusts (clauses 78, 82, 83, 188); as well as
 - b. mutual fund trusts (clauses 129, 130, 169, 193, 83);
 - c. health and welfare trusts (clause 83); and
 - d. trusts governed by registered retirement savings plans and registered retirement income funds (clauses 53, 55, 80, 82, 169, 188).

- Clauses 27, 35, 80 (subsection 107(2) and (2.1)), 83 and 188 are part of a set of amendments designed to clarify the tax consequences of distributions from trusts to their beneficiaries after 1999.
- Clauses 36, 51, 78, 80, 105 and 192 propose changes to the treatment of changes in trust ownership where there is no beneficial change in ownership. Clause 53 extends the tax-free disposition of capital property from an individual to a trust for the exclusive benefit of the individual's spouse or common-law partner during that person's lifetime, to include a transfer property to a trust for the exclusive benefit of the individual, or for the joint benefit of the individual's spouse or common-law partner.
- Several proposed amendments restrict the exemption from the 21-year rule for trusts in which all interests have vested indefeasibly to cases where the beneficiaries are all resident in Canada. This exemption is in paragraph (g) of the definition "trust" in subsection 108(1) (clause 83). A related relieving amendment to subsection 104(5.8) (clause 78) provides that the date of the 21-year anniversary for such a trust is determined without reference to the special transfer rules for trusts in ss. 104(5.8), if the transfer occurred on or before 24 December 1998. Further proposed amendments related to the 21-year deemed disposition rule are found in clauses 52, 55, 78, 80, 81, 86 (ss. 108(6)), 171 and 172.
- The treatment of income interest in a trust is addressed in clauses 79, 80 and 83 (in the definition of "capital income"). The proposed amendments under clause 79 aim to assure that there is no double taxation on the disposition of an income interest in a trust.

22. Advertising Expenses (clauses 11 and 12)

- Implements the income tax aspects of the June 1999 agreement between Canada and the United States concerning periodicals. It will permit full deductibility of expenses for advertisements published in periodicals that contain at least 80% original editorial content, and 50% deductibility for advertising expenses in other periodicals, regardless of the ownership of the periodical.

23. Simultaneous Control (clause 194)

- Confirms that, in a chain of corporations, a corporation is controlled by its immediate parent even where the parent is itself controlled by a third corporation.

24. Foreign Affiliates Held by Partnerships (clauses 68-71)

- Ensures that Canadian corporations that are members of a partnership that holds shares of non-resident corporations are provided relief from double taxation on the income derived from those shares and receive the same tax treatment for the disposition of those shares as if they held the shares directly.

25. Foreign Affiliate Losses (clause 73)

- Provides that foreign accrual property losses of a foreign affiliate may be carried back three years and forward seven years for the purpose of determining the affiliate's foreign accrual property income for a particular taxation year.

26. Stop-Loss Rule (clauses 25, 102, 138, 160-161)

- Extends the rule that suspends recognition of a loss when a corporation, trust or partnership transfers depreciable property to transferors who are affiliated persons (including individuals).

27. Types of Property (clause 38)

- Amends the corporate divisive reorganization rules to no longer require that each transferee corporation receive its pro-rata share of each type of property in the case of certain public corporate divisive reorganizations.

28. Limited Liability Partnerships (clauses 25, 74)

- Ensures that a member of a “limited liability partnership” (under provincial law) is not automatically a “limited partner” for the purposes of the *Income Tax Act*.

29. Non-Resident Film and Video Actors (clauses 90, 151, 173-175)

- Applies a new 23% withholding tax on payments to non-resident film and video actors and their corporations, with an option to have the actor and corporation pay regular Part I tax on the net earnings instead.

30. \$1,000 Tax-Free Amount for Emergency Service Volunteers (clause 60)

- Replaces the current deduction of up to \$1,000 for compensation received by volunteer emergency service providers with a corresponding exclusion from employment income for income tax purposes. This change will have no income tax implications for volunteer emergency service providers. Heating expenses cheques and some travel expenses are excluded from income for tax purposes.

31. Alternative Minimum Tax (clauses 119, 121)

- Consequent to the lowering of the capital gains tax, the capital gains inclusion rate for alternative minimum tax (AMT) purposes is to be reduced to 80%; 40% of the stock option deduction claimed in calculating regular income tax for taxable stock option benefits is to be deductible in calculating taxable income for AMT purposes.
- The amendments include other items in the deduction that may be taken into consideration when determining adjustable taxable income.

32. Compliance (clause 182)

- Expands the prohibition on hindering, molesting or interfering with an official performing certain administrative and enforcement functions under the *Income Tax Act* to include any act that the official is authorized under the Act to perform.
- Alternative means of enforcing compliance are included under new section 231.7 (clauses 183, 181).
- Related amendments are proposed for the *Excise Tax Act* (clauses 257-259).

33. Provision of Information (clauses 186, 184)

- The Canada Customs and Revenue Agency (CCRA) is allowed to disclose taxpayer information for business activities carried on in a province to provincial statistical

agencies, only where such information is to be used by the provincial agency solely for research and analysis and that agency is authorized under the law of the province to collect the same or similar information on its own behalf for such business activities. Information can also be provided to a police officer solely for the purpose of investigating whether an offence has been committed, or the laying of an information or the preferring of an indictment, where:

- such information can reasonably be regarded as being relevant for the purpose of ascertaining the circumstances in which an offence under the *Criminal Code* may have been committed, or the identity of the person who may have committed an offence, with respect to an official (or a person related to that official);
 - the official was or is engaged in the administration or enforcement of the *Income Tax Act*; and
 - the offence can reasonably be considered to be related to that administration or enforcement.
- Similar amendments are proposed for the *Excise Tax Act* (clauses 260-262).

34. Prescribed Stock Exchange (clause 188)

- New subsection 248(29) allows for the addition of a part, division or subdivision of a stock exchange to the list of either prescribed stock exchanges in Canada or prescribed foreign stock exchanges.

35. GST Tax Credit (clause 107)

- This clause proposes the removal of the GST tax credit for individuals imprisoned during the 12-month period ending 30 June 2002 for the 2000 taxation year (i.e., GST payments made in July and October 2001, and January and April 2002). This short timeline anticipates a more general reform of the GST tax credit.

36. Definitional Changes (clause 188)

- Clause 188 includes proposed amendments, and new terms, for use in the *Income Tax Act*. New terms include:
 - a. “*alter ego* trust”;
 - b. “disposition” (with consequential amendments to clauses 6, 25, 34, 36, 37, 40, 48, 78, 80, 130), which has implications for many of the clauses involving trusts;
 - c. “foreign resource pool expenses,” “foreign resource property”;

- d. “joint spousal or common-law partner trust”; and
- e. “taxable Canadian property” (clarifies the existing definition of “taxable Canadian property”; with consequential amendments found in clauses 25, 36, 65, 90, 91, 123, 128, 129, 131, 135, 177, 249).

37. Insurance Corporations (clauses 9, 133)

- Clause 9 (section 18(9.02)) proposes the introduction of a technical amendment regarding the timing of certain deductible expenses.
- Amendments in clause 133 address insurance corporations. They suggest changes to the tax treatment of interest on borrowed money used to acquire designated insurance property.

38. Winding Up of a Corporation (clause 66)

- This section proposes changes to the treatment of the parent corporation when it winds up a subsidiary.

39. Corporate Tax Reduction (clauses 111-113)

- Clause 112 proposes rules to allow a corporation to reduce its tax payable by a percentage of the corporation’s “full rate taxable income,” increasing in stages from 1% for 2001 to 7% after 2003. Investment corporations, mortgage investment corporations, mutual fund corporations, and non-resident owned investment corporations are not eligible. Canadian-controlled private corporations (CCPCs) would receive an additional rate reduction, equal (in broad terms) to 7% of up to \$100,000 of the CCPC’s active business income over the amount that benefits from the special rate for small business income under section 125.
- Clause 111 proposes that the 4% corporate surtax will be calculated on federal income tax payable before taking into account the proposed tax reduction in clause 112.

40. Harmonization with the Civil Code of Quebec (clauses 196-237)

- Recognizes changes in terminology and new substantive rules made by Quebec’s Civil Code, which came into force on 1 January 1994.

CLARIFICATIONS, AND TECHNICAL AND MINOR AMENDMENTS

- Clause 10: matchable expenditure rules regarding reinsurance
- Clause 13: deductions for business outlays
- Clause 37: definition of “principal residence”
- Clause 103: amendment in recognition of lower provincial tax rates
- Clause 103: refers to a part of the Act that no longer exists
- Clause 113: Small business deduction
- Clause 114: Manufacturing and processing profits deduction (also extends this deduction to the production of “steam for sale”)
- Clause 115: Canadian film or video production tax credit (see also clause 156)
- Clause 116: Canadian film or video production services tax credit (see also clause 156)
- Clause 126: closes a loophole of a transitional rule regarding the disposition of property before 13 November 1981
- Clause 135: Exclusion from taxable Canadian property (changes numbering)
- Clause 143: Employee’s pension contributions deductions
- Clause 144: Transfer to RPP, RRSP or RRIF for spouse on Marriage Breakdown
- Clause 145: Miscellaneous Exemptions
- Clause 146: National Arts Service Organizations
- Clause 162: Corrects an oversight to the recovery of Old Age Security Benefits
- Clause 164: connected corporations: confusing
- Clause 179: collection restrictions
- Clause 180: withholding taxes (application to Crown)
- Clause 186: provision of information by CCRA on a registered charity that no longer exists
- Clause 187: transfer pricing (French-English concordance)
- Clause 189: definition of “fiscal period”
- Clause 195: deemed interest on preferred shares, corrects a cross-reference
- Clauses 238-248, 252, 253
- *Canadian Pension Plan*: Clause 254 (computing a person’s income under the *Income Tax Act*)
- *Customs Act*: Clauses 255 and 256 (hindering an officer)
- *Excise Tax Act*: Clause 257 (compliance);
- *Modernization of Benefits and Obligations Act*: Clause 263 (misprint)
- *Sales Tax and Excise Tax Amendments Act, 1999*: Clause 264 (French version concordance)