



Corporation Capital Tax Act

R.S.B.C. 1996, CHAPTER 73

[Current to last amendment, March 12, 2009]

This is a current unofficial
consolidation produced by the
Queen's Printer for convenience
purposes using QP LegalEze data.

CORPORATION CAPITAL TAX ACT**[RSBC 1996] CHAPTER 73***Contents*

<i>Section</i>	
1	Definitions and interpretation
1.1	Application
2	Permanent establishment
3	Liability for tax and general tax rates
3.1	Reduced tax for smaller financial corporations that are not associated with other corporations
3.2	Reduced tax for smaller financial corporations that are associated with one or more other corporations
3.21	Deduction from tax payable — transition to minimum tax
3.22	Sections 3 to 3.21 cease to apply
3.3 – 3.5	Repealed
4	Exemption from tax
5	Apportionment of tax
6	Taxation year
7	Aggregate paid up capital
7.1	Aggregate paid up capital – authorized foreign banks
8 – 9	Repealed
10	Total paid up capital
11	Net paid up capital
12	B.C. paid up capital
13 – 16	Repealed
17	General rules for B.C. paid up capital
18	Annual return
19	Installment payments and interest
20	Requirements on responsible representatives
21	Investigation
22	Enforcement
23	Penalty
24	Power to make inquiry
24.1	Contempt proceeding for uncooperative person
24.2	Immunity protection
25	Power to specify records
26	Duty of certain persons to give information
27	Confidentiality
28	Notice of assessment
29	Continuing liability for taxes
30	Refund of overpayment
31	Giving notice of assessment
32	Appeal to minister

- 33 Appeal to court
- 34 Irregularity in procedure
- 35 Payment date not affected by appeal
- 36 Tax to constitute a lien
- 37 Notice of proceedings
- 38 Recovery by action
- 39 Filing of certificate
- 40 Attachment
- 41 Recovery by distress
- 42 Powers may be exercised separately
- 42.1 Limitation period
- 43 Method of providing notices and demands
- 44 Delegation of powers
- 45 Limitation
- 46 Penalty for default
- 47 Offence and penalty
- 48 Power to make regulations

Definitions and interpretation

1 (1) In this Act:

“**administrator**” means the person designated as the administrator by the minister for the purposes of this Act;

“**aggregate paid up capital**” means

- (a) subject to paragraph (b), aggregate paid up capital within the meaning of section 7, and
- (b) in relation to an authorized foreign bank, aggregate paid up capital within the meaning of section 7.1;

“**amount**” means an amount of money or the dollar value of a right or thing;

“**assessment**” includes reassessment;

“**associated**” has the same meaning as in section 256 of the *Income Tax Act* (Canada);

“**authorized foreign bank**” has the same meaning as in section 2 of the *Bank Act* (Canada);

“**bank**” includes an authorized foreign bank but does not include a bank in respect of which an application under section 344 of the *Bank Act* (Canada) has been approved under section 345 (2) of that Act;

“**B.C. paid up capital**” means the result obtained by subtracting from a financial corporation’s net paid up capital the deduction, if any, made by the financial corporation under section 12;

“**business**” means an undertaking of any kind, and includes

- (a) any profession, calling, trade or manufacture,
- (b) any adventure in the nature of trade,

- (c) any concern in the nature of trade, and
- (d) any arrangement or endeavour conducted with a view to earning revenue or profit from an activity or an investment;

“credit union” means a credit union or extraprovincial credit union as defined in the *Financial Institutions Act*;

“deferred credit” includes, in respect of a financial corporation, government assistance, government grants, investment tax credits or tax incentives that are reported or accounted for in the financial statements of the financial corporation;

“financial corporation” means

- (a) a bank, trust company or credit union, and
- (b) the agent, assignee, trustee, liquidator, receiver or other official in whose hands, or under whose control, all or any part of the property of a bank, trust company or credit union is placed;

“generally accepted accounting principles” means generally accepted accounting principles used in Canada;

“jurisdiction” means

- (a) a province of Canada, or
- (b) a state outside Canada having sovereign power;

“net paid up capital” means the result obtained by subtracting from a financial corporation’s total paid up capital the deduction, if any, made by the financial corporation under section 11;

“permanent establishment” means a permanent establishment as determined under section 2;

“property” means property of any kind and includes

- (a) a right to or interest in property,
- (b) a share,
- (c) a chose in action, and
- (d) money;

“return” means a return in the form established by the minister;

“share” means a share of the capital stock of a corporation;

“tax” includes all penalties and interest that are, or may be, added to the tax under this Act;

“tax payable” by a financial corporation includes the tax payable by the financial corporation as fixed by assessment or reassessment or varied on appeal, in accordance with this Act;

“threshold amount” for a taxation year of a financial corporation means the applicable amount indicated opposite the taxation year as follows:

<i>Taxation year</i>	<i>Threshold amount</i>
Ending after December 31, 2000 and on or before March 31, 2003	\$5 million;
Ending after March 31, 2003	\$10 million;

“**total paid up capital**” means the result obtained by subtracting from a financial corporation’s aggregate paid up capital the deduction, if any, made by the financial corporation under section 10;

“**trust company**” means a trust company as defined in the *Financial Institutions Act* or the B.C. Community Financial Services Corporation established under the *Community Financial Services Act*, and includes

- (a) an extraprovincial trust corporation as defined in the *Financial Institutions Act*, and
- (b) a corporation that is a subsidiary of a bank and is a loan company to which the *Trust and Loan Companies Act* (Canada) applies.

(2) [Repealed 2001-30-2.]

(3) [Repealed 2002-10-2.]

(4) For the purposes of this Act,

- (a) financial corporations are associated financial corporations if they are associated corporations within the meaning of section 256 of the *Income Tax Act* (Canada), and
- (b) a financial corporation is associated with another financial corporation at the end of the first mentioned financial corporation’s taxation year if the financial corporations were, at any time during that taxation year, associated financial corporations.

(5) Except as otherwise provided in this Act, for the purposes of determining the carrying value of the assets of a financial corporation, or any other amount relevant to the computation of a financial corporation’s B.C. paid up capital for a taxation year, the amounts that must be used are the amounts reflected in the financial statements of the financial corporation for the taxation year that have been

- (a) prepared in accordance with generally accepted accounting principles, and
- (b) presented to the shareholders of the financial corporation.

(6) Despite subsection (5), the equity and consolidation methods of accounting, other than the proportionate consolidation method for joint ventures, must not be used for the purposes referred to in that subsection.

(7) If the financial statements referred to in subsection (5) were not prepared, the amounts that would have been reflected in those financial statements if they had been prepared must be used for the purposes referred to in that subsection.

Application

- 1.1** (1) In this section, “**corporation**” means a corporation, as defined in this Act as it read on August 31, 2002.
- (2) Despite the *Corporation Capital Tax Amendment Act, 2001* and the *Corporation Capital Tax Amendment Act, 2002*, this Act and the regulations under this Act, as they read on August 31, 2002, continue to apply to a corporation for a taxation year that began before September 1, 2002.
- (3) Despite subsection (2), the definition of “threshold amount” as re-enacted by the *Budget Measures Implementation Act, 2003* applies to financial corporations with taxation years beginning before September 1, 2002.

Permanent establishment

- 2** (1) In this section:
- “**charter**” includes
- (a) an Act, a statute, an ordinance, letters patent, a certificate, a declaration or any other instrument or provision of law by or under which a financial corporation is incorporated, amalgamated or continued,
 - (b) the memorandum, articles or bylaws, by whatever name called, of a financial corporation, and
 - (c) in relation to a credit union, its constitution and rules;
- “**fixed place of business**” includes a branch, an office and an agency;
- “**subsidiary controlled corporation**” means a corporation more than 50% of the issued share capital of which, having full voting rights under all circumstances, belongs to the financial corporation to which it is subsidiary.
- (2) A financial corporation that has a fixed place of business has a permanent establishment at that place.
- (3) A financial corporation that has no fixed place of business has a permanent establishment at the principal place in which the financial corporation’s business is conducted.
- (4) A financial corporation that does not otherwise have a permanent establishment in Canada has a permanent establishment at each of the following:
- (a) the place, if any, designated as its head office in
 - (i) its charter, or
 - (ii) any other record or resolution by which the designation of a head office for the financial corporation can be effectively made;
 - (b) the place, if any, designated as its registered office in
 - (i) its charter, or
 - (ii) any other record or resolution by which the designation of a registered office for the financial corporation can be effectively made.

-
- (5) If a financial corporation carries on business through an employee or agent, established in a particular place, who has general authority to contract for the employer or principal, the financial corporation is deemed to have a permanent establishment at that place.
 - (6) A financial corporation that uses substantial machinery or substantial equipment in a particular place at any time has a permanent establishment at that place.
 - (7) A financial corporation that otherwise has a permanent establishment in Canada is deemed to have a permanent establishment on land it owns, or has a right to or interest in, in Canada.
 - (8) [Repealed 2002-10-4.]
 - (9) The fact that a financial corporation has business dealings through a commission agent, broker or other independent agent does not by itself mean that the financial corporation has a permanent establishment.
 - (10) The fact that a financial corporation has
 - (a) a subsidiary controlled corporation at a place, or
 - (b) a subsidiary controlled corporation engaged in a trade or business at a placedoes not by itself mean that the financial corporation has a permanent establishment at that place.
 - (11) and (12) [Repealed 2002-10-4.]

Liability for tax and general tax rates

- 3** (1) A financial corporation must, for each taxation year that the financial corporation has or had a permanent establishment in British Columbia, pay to the government a tax calculated in accordance with this Act if the financial corporation has, at the end of that taxation year,
 - (a) in the case of a financial corporation that is not associated with one or more other financial corporations, net paid up capital that is equal to or greater than the threshold amount, or
 - (b) in the case of a financial corporation that is one of 2 or more associated financial corporations, net paid up capital that, when added to the net paid up capital of every financial corporation with which it is associated, is in total equal to or greater than the threshold amount.
- (2) If a financial corporation has, at the end of an applicable taxation year, net paid up capital of more than \$1 billion, the tax imposed on and payable by the financial corporation under subsection (1) for the taxation year is,
 - (a) in the case of a financial corporation that, at the end of the applicable taxation year, is based in British Columbia and has its head office in British Columbia, an amount equal to 1% of the B.C. paid up capital of the financial corporation for that taxation year, or

- (b) in any other case, an amount equal to 3% of the B.C. paid up capital of the financial corporation for that taxation year.
- (2.1) If a financial corporation has, at the end of an applicable taxation year, net paid up capital of \$1 billion or less, the tax imposed on and payable by the financial corporation under subsection (1) for the taxation year is, subject to sections 3.1 and 3.2, an amount equal to 1% of the B.C. paid up capital of the financial corporation for that taxation year.
- (3) and (3.1) [Repealed 2001-30-6.]
- (4) If a financial corporation is one of 2 or more associated financial corporations, the amounts of net paid up capital of the associated financial corporations that are to be added together for the purposes of subsection (1) (b) must be computed by using the taxation year for each associated financial corporation that ends in the same calendar year as the taxation year of the financial corporation for which the tax payable is being determined.
- (5) [Repealed 2001-30-6.]
- (6) The Lieutenant Governor in Council may make regulations
 - (a) defining when a financial corporation is considered to be based in British Columbia, and
 - (b) defining “head office”for the purposes of subsection (2) (a).
- (7) A regulation made under subsection (6) may be made retroactive to July 1, 1999 or such later date as the Lieutenant Governor in Council may determine, and a regulation made retroactive is deemed to come into force on the date specified in the regulation.

Reduced tax for smaller financial corporations that are not associated with other corporations

- 3.1** (1) For a financial corporation that
- (a) is referred to in section 3 (2.1),
 - (b) is not one of 2 or more associated financial corporations, and
 - (c) has, at the end of the applicable taxation year, B.C. paid up capital that is less than the total of the threshold amount plus \$250 000,
- in the circumstances described in this section, the tax imposed on and payable under this Act by the financial corporation for that taxation year is the amount determined under this section rather than the amount of tax that would otherwise be payable by the financial corporation under section 3.
- (2) If, at the end of a taxation year, the financial corporation has B.C. paid up capital that is
- (a) equal to or greater than the threshold amount, and
 - (b) less than the total of the threshold amount plus \$250 000,

the amount of tax imposed on and payable by the financial corporation for the taxation year is to be determined in accordance with the following formula:

$$\text{Amount} = \text{tax otherwise payable} - [(\text{notch} - \text{capital}) \times 1.6\%]$$

where

- | | | |
|-----------------------|---|--|
| tax otherwise payable | = | the amount of tax otherwise payable under section 3 for the taxation year by the financial corporation, if this section did not apply; |
| notch | = | the total of the threshold amount plus \$250 000; |
| capital | = | the financial corporation's B.C. paid up capital for the taxation year. |

- (3) If, at the end of a taxation year, the financial corporation has B.C. paid up capital that is
- (a) equal to or greater than \$1.5 million, and
 - (b) less than the threshold amount,

the amount of tax imposed on and payable by the financial corporation for the taxation year is to be determined in accordance with the following formula:

$$\text{Amount} = [(\text{capital} - \$1.5 \text{ million}) \times 1\%] + \$500$$

where

- | | | |
|---------|---|---|
| capital | = | the financial corporation's B.C. paid up capital for the taxation year. |
|---------|---|---|

- (4) If, at the end of a taxation year, the financial corporation has B.C. paid up capital that is
- (a) equal to or greater than \$250 000, and
 - (b) less than \$1.5 million,

the amount of tax imposed on and payable by the financial corporation for the taxation year is \$500.

- (5) If, at the end of a taxation year, the financial corporation has B.C. paid up capital that is less than \$250 000, the amount of tax imposed on and payable by the financial corporation for the taxation year is the lesser of
- (a) the amount of tax that would be payable under section 3 for the taxation year by the financial corporation, if this section did not apply, and
 - (b) \$250.

Reduced tax for smaller financial corporations that are associated with one or more other corporations

- 3.2** (1) For a financial corporation that
- (a) is referred to in section 3 (2.1),
 - (b) is one of 2 or more associated financial corporations, and

(c) has, at the end of the applicable taxation year, B.C. paid up capital that, when added to the B.C. paid up capital of every financial corporation with which it is associated, is in total not more than the total of the threshold amount plus \$250 000,

in the circumstances described in this section, the tax imposed on and payable under this Act by the financial corporation for that taxation year is the amount determined under this section rather than the amount of tax that would otherwise be payable by the financial corporation under section 3.

- (2) If, at the end of a taxation year, the financial corporation has B.C. paid up capital that, when added to the B.C. paid up capital of every financial corporation with which it is associated, is in total
- (a) equal to or greater than the threshold amount, and
 - (b) less than the total of the threshold amount plus \$250 000,

the amount of tax imposed on and payable by the financial corporation for the taxation year is its proportionate share of the amount determined in accordance with the following formula:

$$\text{Amount} = \text{total tax otherwise payable} - [(\text{notch} - \text{total capital}) \times 1.6\%]$$

where

total tax otherwise payable = the total amounts of tax that would be payable under section 3 for the taxation year by the financial corporation and every financial corporation with which it is associated, if this section did not apply;

notch = the total of the threshold amount plus \$250 000;

total capital = the total of the B.C. paid up capital for the taxation year for the financial corporation and every financial corporation with which it is associated.

- (3) If, at the end of a taxation year, the financial corporation has B.C. paid up capital that, when added to the B.C. paid up capital of every financial corporation with which it is associated, is in total
- (a) equal to or greater than \$1.5 million, and
 - (b) less than the threshold amount,

the amount of tax imposed on and payable by the financial corporation for the taxation year is its proportionate share of the amount determined in accordance with the following formula:

$$\text{Amount} = [(\text{total capital} - \$1.5 \text{ million}) \times 1\%] + \$500$$

where

total capital = the total of the B.C. paid up capital for the taxation year for the financial corporation and every financial corporation with which it is associated.

- (4) If, at the end of a taxation year, the financial corporation has B.C. paid up capital that, when added to the B.C. paid up capital of every financial corporation with which it is associated, is in total
- equal to or greater than \$250 000, and
 - less than \$1.5 million,
- the amount of tax imposed on and payable by the financial corporation for the taxation year is its proportionate share of \$500.
- (5) If, at the end of a taxation year, the financial corporation has B.C. paid up capital that, when added to the B.C. paid up capital of every financial corporation with which it is associated, is in total less than \$250 000, the amount of tax imposed on and payable by the financial corporation for the taxation year is its proportionate share of the lesser of
- the total amount of tax that would be payable under section 3 for the taxation year by the financial corporation and every financial corporation with which it is associated, if this section did not apply, and
 - \$250.
- (6) For the purposes of this section, the proportionate share of an amount that is payable by a financial corporation under this section is the proportion that
- its B.C. paid up capital
- bears to
- the total of the B.C. paid up capital of the financial corporation and every financial corporation with which it is associated that has a positive B.C. paid up capital.
- (7) For the purpose of determining the tax payable by a financial corporation under this section, the amounts of B.C. paid up capital of the associated financial corporations and the amounts of tax otherwise payable under section 3 that are to be added together for the purposes of this section must be computed by using the taxation year for each associated financial corporations that ends in the same calendar year as the taxation year of the financial corporation for which the tax payable is being determined.

Deduction from tax payable — transition to minimum tax

- 3.21** (1) In this section, “**capital tax payable**” means a financial corporation’s tax payable under section 3, 3.1 or 3.2 for a taxation year.
- (2) A financial corporation may deduct from the financial corporation’s capital tax payable for a taxation year the amount determined by the following formula:

$$Amount = \left[\frac{1}{3} \times CTP \times \frac{DT1}{DTY} \right] + \left[\frac{2}{3} \times CTP \times \frac{DT2}{DTY} \right] + \left[CTP \times \frac{DT3}{DTY} \right]$$

where

- CTP = the financial corporation's capital tax payable for the taxation year;
- DT1 = the number of days in the financial corporation's taxation year that are after March 31, 2008 and before April 1, 2009;
- DTY = the number of days in the financial corporation's taxation year;
- DT2 = the number of days in the financial corporation's taxation year that are after March 31, 2009 and before April 1, 2010;
- DT3 = in respect of the financial corporation's taxation year that includes and ends after March 31, 2010, the number of days in that taxation year that are after March 31, 2010.

Sections 3 to 3.21 cease to apply

3.22 Sections 3 to 3.21 do not apply to a financial corporation in respect of a taxation year that begins after March 31, 2010.

Repealed

3.3 – 3.5 [Repealed 2001-30-7.]

Exemption from tax

- 4** (1) If, in a taxation year of a financial corporation, the financial corporation's total taxable income, determined for the purposes of the *Income Tax Act* (Canada), is exempt from income tax under section 149 (1) or 149.1 of that Act, then, subject to subsection (2), that financial corporation is exempt from the tax under this Act for that taxation year.
- (2) The exemption under subsection (1) does not apply to Crown corporations designated by regulation.
- (3) The following financial corporations are exempt from the tax under this Act:
- (a) the Credit Union Central of British Columbia;
 - (b) the Stabilization Central Credit Union of British Columbia;
 - (c) a bankrupt financial corporation from the date of its bankruptcy for as long as it remains a bankrupt.
 - (d) to (k) [Repealed 2002-10-8.]

Apportionment of tax

- 5** (1) If a financial corporation has a taxation year of more or less than 365 days, the tax payable under this Act by the financial corporation for that taxation year is equal to that proportion of the tax otherwise payable under this Act for the taxation year that the number of days in the taxation year bears to 365 or, in a leap year, 366.
- (2) If a financial corporation ceases to have a permanent establishment in British Columbia during a taxation year, the taxation year is deemed to consist of the number of days in the year during which the financial corporation had a permanent

establishment in British Columbia, and subsection (1) applies to that taxation year.

- (3) If a financial corporation begins having a permanent establishment in British Columbia during a taxation year, the taxation year is deemed to consist of the number of days in the year during which the financial corporation had a permanent establishment in British Columbia, and subsection (1) applies to that taxation year.
- (4) If a financial corporation has a taxation year part of which is before April 1, 1992 and part of which is after March 31, 1992, the tax payable under this Act is equal to that proportion of the tax otherwise payable under this Act that the number of days in the taxation year after March 31, 1992 bears to the number of days in the taxation year.
- (5) Subsections (2) and (3) do not apply to a financial corporation that is eligible for a deduction under section 12.

Taxation year

- 6** (1) [Repealed 1997-6-5.]
- (2) The taxation year of a financial corporation for the purposes of this Act is the same as its taxation year, or deemed taxation year, under the *Income Tax Act* (Canada).
- (2.1) [Repealed 2002-10-10.]
- (3) If a financial corporation's taxation year, or deemed taxation year, under the *Income Tax Act* (Canada) changes, or is deemed to change or to have changed, in any way because of the operation of that Act, then the financial corporation's taxation year for the purposes of this Act is deemed to change, or to have changed, at the same time, in the same manner and to the same extent.
- (4) If a financial corporation changes its taxation year, the financial corporation must advise the administrator of the new taxation year within 30 days after the change.

Aggregate paid up capital

- 7** (1) The aggregate paid up capital of a financial corporation, other than an authorized foreign bank, means the aggregate of the amounts, computed at the end of its taxation year, of its
 - (a) capital stock,
 - (b) contributed surplus,
 - (c) retained earnings, and
 - (d) [Repealed 2002-10-11.]
 - (e) accumulated other comprehensive income.
- (2) Despite section 1 (5), for the purposes of subsection (1) of this section,

- (a) subject to paragraph (b), the capital stock of a financial corporation includes all shares in the financial corporation, and
- (b) the capital stock of a credit union does not include its non-equity shares as defined by the *Financial Institutions Act*.

Aggregate paid up capital – authorized foreign banks

- 7.1** (1) The aggregate paid up capital of an authorized foreign bank means the amount, if any, computed at the end of its taxation year, by which the aggregate of
- (a) 10% of its total risk weighted assets, and
 - (b) its capital deductions,
- exceeds the lesser of
- (c) the total of all amounts that represent its subordinated indebtedness, and
 - (d) the total of the following amounts:
 - (i) 3% of its total risk weighted assets;
 - (ii) its capital deductions except those capital deductions required to be deducted from tier 1 capital under the capital adequacy guidelines issued by the Superintendent of Financial Institutions (Canada).
- (2) [Repealed 2003-23-1.]
- (3) [Repealed RS1996-73-7.1 (4).]
- (4) [Spent. RS1996-73-7.1 (4).]
- (5) [Repealed RS1996-73-7.1 (6).]
- (6) [Spent. RS1996-73-7.1 (6).]

Repealed

- 8 – 9** [Repealed 2001-30-10.]

Total paid up capital

- 10** At the end of a taxation year of a financial corporation other than an authorized foreign bank, the financial corporation's negative retained earnings, if any, may be deducted from its aggregate paid up capital.

Net paid up capital

- 11** (1) In this section, "**total assets**" means
- (a) in relation to a financial corporation other than an authorized foreign bank, the aggregate of the carrying values of the financial corporation's assets on its balance sheet at the end of its taxation year and includes the amounts by which the carrying values of its assets have been reduced by liabilities or deferred credits, and
 - (b) in relation to an authorized foreign bank, the aggregate of the carrying values of the authorized foreign bank's assets on its balance sheet at the end of its taxation year that are used or held in the course of its Canadian banking business before the application of risk weights under the OSFI risk-weighting guidelines.

-
- (2) A financial corporation, other than an authorized foreign bank, may deduct an investment allowance under subsection (2.01) if
 - (a) the financial corporation owns shares of another financial corporation that has a permanent establishment in British Columbia, other than a financial corporation referred to in section 4 (3), and
 - (b) the taxation year of the financial corporation and the other financial corporation end on the same date.
 - (2.01) A financial corporation may deduct from its total paid up capital an investment allowance equal to the proportion of the total paid up capital that the carrying value of those shares in the other financial corporation bears to the total assets of the financial corporation.
 - (2.1) An authorized foreign bank may deduct an investment allowance under subsection (2.2) if
 - (a) in the course of carrying on its Canadian banking business, the authorized foreign bank owns shares of another financial corporation that has a permanent establishment in British Columbia, other than a financial corporation referred to in section 4 (3), and
 - (b) the taxation year of the authorized foreign bank and the other financial corporation end on the same date.
 - (2.2) An authorized foreign bank may deduct from its total paid up capital an investment allowance equal to the proportion of the total paid up capital that the carrying value of those shares in the other financial corporation bears to the total assets of the authorized foreign bank.
 - (3) The investment allowance to which a financial corporation may be entitled under this section must not be greater than the aggregate of the carrying values of the investments referred to in this section that are made by the financial corporation.
 - (4) For the purposes of applying subsection (2.2) to an authorized foreign bank, the carrying values of the shares referred to in that subsection are the total value of those shares used or held in the course of its Canadian banking business at the end of its taxation year before the application of risk weights under the OSFI risk-weighting guidelines.

B.C. paid up capital

- 12**
- (1) At the end of a taxation year of a financial corporation other than an authorized foreign bank, there may be deducted from the net paid up capital of the corporation that portion of the net paid up capital that is allocated to jurisdictions outside British Columbia in accordance with prescribed rules.
 - (2) At the end of a taxation year of an authorized foreign bank, there may be deducted from the net paid up capital of the corporation that portion of the net paid up capital that is allocated to Canadian jurisdictions other than British Columbia in accordance with prescribed rules.

Repealed

13 – 14 [Repealed 2001-30-14.]

Repealed

15 [Repealed 1998-5-4.]

Repealed

16 [Repealed 2002-10-16.]

General rules for B.C. paid up capital

17 (1) In this section:

“avoidance transaction” means a transaction

(a) that, but for this section, would result, directly or indirectly, in a tax benefit, or

(b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit,

but does not include a transaction that may reasonably be considered

(c) to have been undertaken or arranged primarily for bona fide purposes other than one or both of the following:

(i) to obtain the tax benefit;

(ii) to reduce, avoid or defer a tax or other amount payable as tax or in respect of tax under any other enactment of the Province, the government of Canada or another jurisdiction or increase a refund of tax or other amount in respect of tax under any other enactment of the Province, the government of Canada or another jurisdiction, or

(d) to be a transaction that would not result, directly or indirectly, in a misuse of the provisions of this Act or an abuse having regard to the provisions of this Act, other than this section, read as a whole;

“tax benefit” means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act;

“tax consequences” to a financial corporation means the B.C. paid up capital or the tax or other amount payable by, or refundable to, the financial corporation under this Act, or any other amount that is relevant for the purposes of computing that amount;

“transaction” includes an arrangement or event.

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

(3) Without limiting subsection (2),

(a) any deduction in computing the B.C. paid up capital or any deduction in computing tax payable may be allowed or disallowed in whole or in part,

- (b) the whole or any part of that deduction may be allocated to any financial corporation,
- (c) the nature of any payment or other amount may be recharacterized, and
- (d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored,

in determining the tax consequences to a financial corporation in a manner that is reasonable in the circumstances in order to deny a tax benefit that would, but for this section, result, directly or indirectly, from an avoidance transaction.

- (4) The tax consequences to any financial corporation, following the application of this section, must only be determined through a notice of assessment under section 28.
- (5) [Repealed 1997-6-15.]
- (6) A series of transactions is deemed to include any related transactions completed in contemplation of the series.

Annual return

- 18**
- (1) A financial corporation that is subject to tax under this Act must, on or before the date that is 184 days after the end of the financial corporation's taxation year, and without notice or demand,
 - (a) deliver a return and prescribed records to the administrator, and
 - (b) pay to the minister the estimated tax or, if installment payments have been made under section 19, the difference between the estimated tax and the amount paid by installments.
 - (2) The return must
 - (a) contain an estimate of the tax payable, and
 - (b) be verified by a certificate, signed by a person qualified under subsection (3), certifying that the financial statements included in the return, or attached, are in agreement with the books of the financial corporation.
 - (3) The following persons are qualified to sign the certificate under subsection (2):
 - (a) the president or another officer of the financial corporation having personal knowledge of the affairs of the financial corporation;
 - (b) in the case of a foreign entity, as defined in the *Business Corporations Act*, that carries on business in British Columbia, the manager or chief agent of the financial corporation in British Columbia.
 - (4) A financial corporation may apply to the administrator for permission to extend the time under subsection (1), and if the administrator is satisfied of the circumstances, the administrator may extend the time.
 - (5) Any extension of the time under subsection (4) does not constitute a waiver of liability for the tax, or for any penalties and interest imposed under this Act.

- (6) If a financial corporation fails or neglects to comply with subsection (1) (b), the financial corporation must pay interest on the amount it failed or neglected to pay calculated from the date on which the payment was required until the date that the payment plus all accrued interest is made.

Installment payments and interest

- 19** (1) A financial corporation whose tax payable under this Act exceeds \$3 000 must pay installments in accordance with this section on account of its tax payable for the current taxation year.
- (2) Except as otherwise provided in this section, a financial corporation must, on or before the 15th day of each of the 3rd, 6th, 9th and 12th calendar months to follow the calendar month in which the financial corporation's current taxation year begins, pay an installment equal to 25% of the amount that is determined under subsection (4) to be its estimated tax payable for the current taxation year.
- (3) A financial corporation otherwise required by subsection (2) to make an installment during the period April 1, 1992 to August 31, 1992 inclusive must defer that installment and include it with the next installment due under subsection (2).
- (4) A financial corporation must determine its estimated tax payable, by using either of the following methods:
 - (a) by multiplying the tax payable by the financial corporation for its taxation year immediately preceding the current taxation year by the ratio that 365 bears to the number of days in that preceding taxation year;
 - (b) by estimating the amount.
- (5) For the first taxation year ending after March 31, 1992, the estimated tax payable calculated under subsection (4) (a) must be adjusted by multiplying the estimated tax payable by the ratio that the number of days in the current taxation year after March 31, 1992 bears to 365.
- (6) For the purposes of subsection (4) (a), the tax payable by a financial corporation for its taxation year immediately preceding the current taxation year must be computed the same way as would have been required if at all material times
 - (a) this Act had been in force, and
 - (b) the tax had been annualized on the basis of 365 days in a taxation year or 366 days in a taxation year affected by a leap year.
- (7) A financial corporation that does not pay an installment within the time limits in subsection (2) must pay interest on the amount of the installment calculated
 - (a) from the time the installment became due until payment is made, or
 - (b) if the installment is not paid by the date by which a return must be filed under section 18, from the time of the installment due date until that date.
- (8) If
 - (a) a financial corporation pays an installment on the basis of the estimate permitted by subsection (4) (b), and

- (b) the amount of the installment is less than 25% of the financial corporation's tax payable for the current taxation year,
- the financial corporation must pay interest on the amount of the difference calculated from the installment due date until the date by which the return must be filed under section 18.
- (9) Even though this Act was not in force before April 1, 1992, a financial corporation that pays an installment on the basis of the calculation permitted by subsection (4) (a) must provide to the administrator all the information necessary to verify the calculation.
- (10) The administrator may order a financial corporation to make installments of the taxes required in subsections (2) and (4) if
- (a) the financial corporation estimates its tax payable for a taxation year at less than \$3 000, and
- (b) the administrator believes that the tax payable exceeds \$3 000.
- (11) A financial corporation that is ordered under subsection (10) to make installments of the taxes required in subsections (2) and (4) must make the installments in accordance with the order.
- (12) If the aggregate amount of the installments paid by a financial corporation under this section exceeds the tax payable for the taxation year in respect of which the installments were paid, the amount by which an installment exceeded 25% of the amount of the financial corporation's tax payable for that taxation year earns interest from the later of the due date of the installment and the date that the overpayment was made.
- (13) Interest chargeable or creditable under this Act must be calculated at the rate and in the manner prescribed, and different rates of interest may be prescribed for different purposes.
- (14) If a financial corporation's estimated tax payable determined under subsection (4) exceeds a prescribed amount, the administrator may order the financial corporation to enter into an arrangement that requires the installment payments to be made by electronic means.

Requirements on responsible representatives

- 20** (1) In this section, "**responsible representative**" means a person, other than a trustee in bankruptcy, who is an assignee, liquidator, administrator, receiver, receiver-manager or any other like person.
- (2) A responsible representative administering, winding up, controlling or otherwise dealing with a property or business of a financial corporation, before distributing to one or more persons any property over which the responsible representative has control in that capacity, must obtain a certificate from the administrator under this Act, certifying that all of the following amounts have been paid or that security for the payment of the amounts has been accepted by the administrator:

- (a) amounts for which the financial corporation is liable under this Act for the taxation year in which the distribution is made, or any preceding taxation year;
 - (b) amounts for the payment of which the responsible representative is or can reasonably be expected to become liable as the responsible representative.
- (3) A responsible representative, who distributes to one or more persons property over which the responsible representative has control in that capacity without obtaining the certificate required by subsection (2), is personally liable for the payment of the amounts referred to in that subsection to the extent of the value of the property distributed.
- (4) The administrator may assess a responsible representative who is personally liable under subsection (3) for the amounts referred to in subsection (2), in the same manner and with the same effect as if the assessment were an assessment of the financial corporation under sections 22 and 28.

Investigation

21 If the administrator thinks it necessary or advisable, or suspects that a financial corporation that has not made a return is liable to assessment, the administrator or a person authorized by the administrator, may make

- (a) an independent investigation of the financial corporation, and
- (b) an independent valuation and assessment of the B.C. paid up capital by the financial corporation.

Enforcement

22 (1) The administrator, or a person authorized by the administrator for any purpose related to the administration or enforcement of this Act, may

- (a) during normal office hours enter into a place where
 - (i) a business is carried on,
 - (ii) anything is done in connection with a business, or
 - (iii) business records are or should be kept,

and inspect the records that relate or may relate to the amount of tax payable under this Act, and

- (b) by registered letter or by a demand served personally, require from any person a return, or any information or additional information, or the production of any records within any reasonable time the administrator or authorized person stipulates, if it is reasonable to make the demand in order to determine the liability or possible liability for tax under this Act.
- (2) If a record has been inspected or produced under this section, the person by whom it is inspected or to whom it is produced may make or cause to be made one or more copies, and a document certified by the administrator or the authorized person to be a copy made under this section is evidence of the nature and content of the original.

- (3) A person must not obstruct a person doing anything that he or she is authorized by this section to do.
- (4) Under this Act, an affidavit by the administrator, or the authorized person referred to in subsection (1), in which are stated the facts necessary to establish
 - (a) compliance by the administrator or authorized person with this section, or
 - (b) default by the person on whom a demand is mademust be admitted as evidence in any court and is proof in the absence of evidence to the contrary of the facts stated.

Penalty**23**

- (1) If a person, acting or purporting to act on behalf of a financial corporation, knowingly or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed under this Act, has made, or has participated in, assented to or acquiesced in the making of, a statement or omission in a return, certificate, statement or answer filed or made as required under this Act, with the result described in subsection (2), then the financial corporation is liable to a penalty of 25% of the amount by which the tax that would have been payable is less than the tax payable by the financial corporation for the taxation year.
- (2) The result referred to in subsection (1), without which the penalty under that subsection does not apply, is that the tax that would have been payable by the financial corporation for a taxation year, if the tax had been imposed on the basis of the information provided in the return, certificate, statement or answer, is less than the tax payable by the financial corporation for the taxation year.

Power to make inquiry**24**

- (1) A person authorized in writing by the administrator may make inquiries he or she considers necessary for ascertaining the tax liability of a financial corporation.
- (2) For the purposes of making inquiries under subsection (1), the authorized person may make an order requiring a person to do either or both of the following:
 - (a) attend, in person or by electronic means, before the authorized person to answer questions on oath or affirmation, or in any other manner;
 - (b) produce for the authorized person a record or thing in the person's possession or control.
- (3) The authorized person may apply to the Supreme Court for an order
 - (a) directing a person to comply with an order made under subsection (2), or
 - (b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (2).

Contempt proceeding for uncooperative person**24.1**

The failure or refusal of a person subject to an order under section 24 to do any of the following makes the person, on application to the Supreme Court by the person authorized to make inquiries under that section, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

- (a) attend before the authorized person;
- (b) take an oath or make an affirmation;
- (c) answer questions;
- (d) produce records or things in the person's possession or control.

Immunity protection

- 24.2** (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against a person authorized to make inquiries under section 24, or a person acting on behalf of or under the direction of the authorized, person because of anything done or omitted
- (a) in the performance or intended performance of any duty under section 24,
or
 - (b) in the exercise or intended exercise of any power under section 24 or 24.1.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Power to specify records

- 25** (1) A financial corporation must keep adequate records for this Act, and if the records kept by the financial corporation, in the opinion of the administrator, are inadequate for this Act, the administrator may specify the records to be kept by that financial corporation.
- (2) If the records kept by a financial corporation, in the opinion of the administrator, are inadequate for this Act, or if a financial corporation, on the request of the administrator, fails or refuses to produce its records for examination by the administrator, or if a financial corporation alleges that the records kept by it have been lost or destroyed, the administrator may make his or her own valuation and assessment of the tax liability of the financial corporation.
- (3) A financial corporation must retain the records required to be kept under this section in respect of a taxation year until the latest of the following:
- (a) seven years after the date of delivery of the return for the taxation year;
 - (b) subject to paragraph (c), if the financial corporation has filed a waiver under section 29 in respect of the taxation year, the date on which the waiver ceases to have effect;
 - (c) if the financial corporation has revoked a waiver filed under section 29 in respect of the taxation year, 90 days after the date on which the waiver ceases to have effect;
 - (d) if an appeal has been made under this Act in respect of the taxation year, until all appeals have been exhausted.

Duty of certain persons to give information

- 26** A person, in whatever capacity, who has information about the tax liability of a financial corporation, when required to do so by notice from the administrator, must

prepare and deliver to the administrator any information required within 30 days after the mailing of the notice.

Confidentiality

27 A person who has custody of or control over information or records under this Act must not disclose the information or records to any other person except

- (a) in the course of administering or enforcing this or another taxation Act,
- (b) in court proceedings relating to this or another taxation Act,
- (c) as provided in section 39, 40, 99 or 100 of the *Family Relations Act* or section 8 or 9 of the *Family Maintenance Enforcement Act*,
- (d) under an agreement that
 - (i) is between the government and another government,
 - (ii) relates to the administration or enforcement of taxation enactments, and
 - (iii) provides for the disclosure of information and records to and the exchange of similar information and records with that other government,
- (e) for the purpose of the compilation of statistical information by the government or the government of Canada, or
- (f) to an official of the Ministry of Finance, solely for the purpose of the formulation or evaluation of fiscal policy.

Notice of assessment

- 28** (1) After examination of a return, the administrator must
- (a) verify or alter the amount of the tax payable, and
 - (b) give a notice of the assessment to the financial corporation.
- (2) If a notice of assessment provided to a financial corporation under subsection (1) (b) indicates that the amount of tax payable by the financial corporation is greater than the amount estimated by the financial corporation in its return, the financial corporation must pay to the minister the amount by which the financial corporation's tax payable exceeds the amount estimated by the financial corporation in its return not later than 29 days after the date on which the notice of assessment is given.
- (3) A financial corporation referred to in subsection (2) must pay interest on the amount by which the financial corporation's tax payable exceeds the amount estimated by the financial corporation in its return, calculated from the date that is 184 days after the end of the financial corporation's taxation year to and including the date on which payment of that amount plus all accrued interest is made.

Continuing liability for taxes

- 29** (1) Despite a prior assessment, or if no assessment has been made, a financial corporation continues to be liable for any tax due under this Act.
- (2) The administrator may assess or reassess a financial corporation for a tax or make an additional tax assessment against the financial corporation for a taxation year

- (a) at any time
 - (i) if any person has made any misrepresentation or committed any fraud in making the return or supplying information under this Act for the taxation year,
 - (ii) if the financial corporation has filed a waiver with the administrator for the taxation year, in the form and containing the information required by the administrator, within 6 years from the date of delivery of a return for that taxation year, or
 - (iii) if the financial corporation has not delivered a return for the taxation year, or
 - (b) within 6 years from the date of delivery of a return for the taxation year.
- (3) A waiver filed under subsection (2) (a) (ii) continues in effect until 6 months after the financial corporation files with the administrator a notice revoking the waiver in the form and containing the information required by the administrator.
- (4) Despite subsection (2) (b), if an assessment action has occurred in respect of a financial corporation, the administrator may assess or reassess the financial corporation for a tax or make an additional tax assessment against the financial corporation for a taxation year before the end of the later of
- (a) the last day on which an assessment, reassessment or additional assessment may be made under subsection (2) (b), and
 - (b) the day that is one year after the later of
 - (i) the day on which
 - (A) the administrator receives notification from the financial corporation of all items that affect the corporation's liability or potential liability under this Act and that can reasonably be regarded as relating to the assessment action, or
 - (B) the administrator receives notification of the assessment action from the taxing authority, if the administrator does not receive notification from the financial corporation, and
 - (ii) the 90th day after the day on which the taxing authority mails the assessment action to the financial corporation.
- (5) In subsection (4), “**assessment action**” means
- (a) an assessment, reassessment or additional assessment of tax, interest or penalties,
 - (b) a determination or redetermination of a loss,
 - (c) a confirmation of
 - (i) an assessment, reassessment or additional assessment of tax, interest or penalties, or
 - (ii) a determination or redetermination of a loss,
 - (d) a notification that no tax is payable, or

- (e) a determination of the entitlement to or the amount, if any, of a refundable tax credit

by a taxing authority under the *Income Tax Act* (Canada), the *Income Tax Act* (British Columbia) or a law of a province that imposes a tax similar to the tax imposed under this Act or the *Income Tax Act* (British Columbia).

Refund of overpayment

- 30** (1) If the examination of a return discloses that an overpayment has been made by a financial corporation, the minister, on the certificate of the administrator about the facts, must refund the overpaid amount to the financial corporation from the consolidated revenue fund.
- (2) If the examination of a return discloses that any further tax payable by a financial corporation referred to in subsection (1) is due or accruing due, any overpayment must be applied in satisfaction of that further tax, and notice must be given to the financial corporation, accompanied by the refund of any remainder of the overpayment remaining unapplied.

Giving notice of assessment

- 31** (1) A notice of assessment under this Act must be in writing, and is sufficiently given if delivered to an office of the financial corporation or to the address of the financial corporation stated in the last return under this Act or last known to the administrator.
- (2) If the address of a financial corporation is not known to the administrator, the notice of assessment may be given by mailing it to the financial corporation at the post office nearest to the financial corporation's permanent establishment.
- (3) The notice of assessment, for all purposes of this Act, is deemed to be given on the date it is delivered under subsection (1) or mailed under subsection (2).
- (4) Subject to any appeal provided by this Act, the giving of a notice of assessment to a financial corporation under this Act constitutes assessment of that financial corporation for the purposes of this Act.

Appeal to minister

- 32** (1) Except as otherwise provided in this Act, a financial corporation that objects to the amount at which it is assessed, or considers that it is not liable to taxation, in whole or in part, may personally or by its agents, within 90 days after the date of mailing the notice of assessment provided for in this Act, or within 90 days after the date of filing the return, serve a notice of an appeal to the minister by mailing it by registered mail addressed to the minister at the Parliament Buildings at Victoria, British Columbia.
- (2) The notice must
- (a) state the name and address of the financial corporation, the amount of the tax and the date of the notice of assessment, if any, and

- (b) set out clearly and fully the reasons for the appeal and the facts on which it is based.
- (3) On receiving the notice of appeal, the minister must
 - (a) consider it and the information and documents on file in the office of the administrator,
 - (b) decide the matter, and
 - (c) notify the appellant of the decision.

Appeal to court

- 33** (1) A decision of the minister under section 32 (3) may be appealed to the Supreme Court by way of an originating application.
- (2) The Rules of Court relating to originating applications apply, but Rule 49 does not apply.
- (3) A petition must be filed in the court registry within 90 days after the date on the minister's notification of decision.
- (4) In the petition the government must be designated "Her Majesty the Queen in right of the Province of British Columbia".
- (5) Within 14 days after the filing of the petition under subsection (3), the petition must be served on the government in accordance with section 8 of the *Crown Proceeding Act*.
- (5.1) An appeal under this section is a new hearing that is not limited to the evidence and issues that were before the minister.
- (6) The court may dismiss the appeal, allow the appeal, vary the decision from which the appeal is made or refer the decision back to the administrator for reconsideration.
- (7) An appeal lies from a decision of the Supreme Court to the Court of Appeal with leave of a justice of the Court of Appeal.

Irregularity in procedure

- 34** An assessment must not be varied or disallowed because of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision up to the date of the issuing of the notice of assessment.

Payment date not affected by appeal

- 35** (1) Neither the giving of a notice of appeal by any financial corporation nor any delay in the hearing of the appeal in any way
- (a) affects the date for payment, the interest or penalties or any liability for payment provided by this Act for tax that is the subject matter of the appeal, or
 - (b) delays the collection of the tax.

-
- (2) If the tax is set aside or reduced on appeal, the minister must refund to the financial corporation
- (a) the amount of the tax or excess paid by the financial corporation, and
 - (b) the amount of any additional interest or penalty imposed and paid on that tax or excess.

Tax to constitute a lien

- 36** (1) The tax imposed or assessed under this Act
- (a) is a lien and charge in favour of the government on the entire assets of the financial corporation, or the entire assets of the financial corporation in the hands of a trustee, effective as of the end of the taxation year of the financial corporation for which the tax is imposed, and
 - (b) has priority over all other claims of every person except claims secured by liens, charges or encumbrances registered before that date.
- (2) The liens and charges created by this section and their priority are not lost or impaired by any of the following:
- (a) the neglect, omission or error of the administrator or any agent or person acting under the administrator;
 - (b) the taking or failing to take proceedings to recover the tax;
 - (c) the tender or acceptance of any partial payment of the tax;
 - (d) want of registration.

Notice of proceedings

- 37** Before taking any proceedings for the recovery of the tax under this Act, the administrator must give notice to the financial corporation of the intention to enforce payment, but failure to give notice does not affect the validity of any enforcement proceedings taken.

Recovery by action

- 38** The amount of the tax due and payable may be recovered by action in a court as a debt due to the government.

Filing of certificate

- 39** (1) If default is made in the payment of all or part of tax that is due and payable, the administrator may
- (a) issue his or her certificate stating that the tax is due, the amount remaining unpaid, including interest and penalties, and the name of the financial corporation required to pay it, and
 - (b) file the certificate with the Supreme Court.
- (2) A certificate filed under subsection (1) (b) is of the same effect, and proceedings may be taken, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named.

Attachment

- 40** (1) If the administrator has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a financial corporation, the administrator may demand that the person pay all or part of the money otherwise payable to the financial corporation to the minister on account of the financial corporation's liability under this Act.
- (2) Without limiting subsection (1), if the administrator has knowledge or suspects that a person is about to advance money to, make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a financial corporation, the administrator may demand that that person pay to the minister on account of the financial corporation's liability under this Act the money that would otherwise be so advanced or paid.
- (2.1) A demand under this section may be served by
- (a) personal service,
 - (b) registered mail, or
 - (c) electronic mail or fax.
- (3) If, under this section, the administrator demands that a person pay to the minister, on account of the liability under this Act of a financial corporation, money otherwise payable by that person to the financial corporation as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
- (a) applies to all of those payments to be made by the person to the financial corporation until the liability under this Act is satisfied, and
 - (b) operates to require payments to the administrator out of each payment of the amount stipulated by the administrator in the demand.
- (4) Money or a beneficial interest in money in a savings institution
- (a) on deposit to the credit of a financial corporation at the time a demand is served, or
 - (b) deposited to the credit of a financial corporation after a demand is served
- is money for which the savings institution is indebted to the financial corporation within the meaning of this section, but money on deposit or deposited to the credit of a financial corporation as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a financial corporation in its capacity as a trustee.
- (5) A demand under this section continues in effect until the earlier of
- (a) the demand being satisfied, or
 - (b) the expiration of 90 days after the demand is served.
- (6) Despite subsection (5), a demand made in respect of a periodic payment referred to in subsection (3) continues in effect until satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is served, in which case the demand ceases to have effect on the expiration of that period.

-
- (6.1) Money demanded from a person by the administrator under this section becomes payable
 - (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the financial corporation at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the financial corporation, in any other case.
 - (7) A person who fails to comply with a demand under subsection (1) or (3) is liable to pay to the government an amount equal to the amount that the person was required under subsection (1) or (3), as the case may be, to pay to the minister.
 - (8) A person who fails to comply with a demand under subsection (2) is liable to pay to the government an amount equal to the lesser of
 - (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under subsection (2) to pay to the minister.
 - (9) The receipt of the minister for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
 - (10) Money paid by any person to the minister in compliance with a demand under this section is deemed to have been paid by that person to the financial corporation in respect of which the demand was made.
 - (11) If a person carries on business under a name or style other than the person's own name, the demand under subsection (1), (2) or (3) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if left with an adult person employed at the place of business of the addressee.
 - (12) If persons carry on business in partnership, the demand under subsection (1), (2) or (3) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if served on one of the partners or left with an adult person employed at the place of business of the partnership.
 - (13) In this section, “**savings institution**” means
 - (a) a bank,
 - (b) a credit union,
 - (c) an insurance company,
 - (d) a trust company, and
 - (e) a financial institution that accepts deposits from the public in the normal course of its business.

Recovery by distress

- 41** (1) The administrator or the administrator's agent may levy the amount of the tax that is due and payable, with costs, by distress of

- (a) the goods and chattels of the financial corporation liable to pay the tax,
 - (b) any goods and chattels in that financial corporation's possession, wherever they may be found in British Columbia, or
 - (c) any goods and chattels found on that financial corporation's premises that are the property of or in the possession of any other occupant of the premises and that would be subject to distress for arrears of rent due to a landlord.
- (2) The costs of the administrator or the agent of the administrator for a distress under this section are chargeable against the financial corporation referred to in subsection (1) and are those payable as between landlord and tenant.
 - (3) If distress is made, the administrator or the administrator's agent, by advertisement posted in at least 3 conspicuous public places in the locality where the sale of the distrained property is to be made, must give at least 10 days' public notice of the time and place of the sale and of the name of the financial corporation in default.
 - (4) At the time given in the notice, the administrator or the administrator's agent must sell at public auction the distrained property, or so much of it as may be necessary.
 - (5) If the distrained property is sold for more than the amount of the tax and costs, and if no claim to the surplus is made by any other person on the ground that the property sold belonged to the person, or that the person was entitled by lien or other right to the surplus, the surplus must be paid over to the person who had possession of the property when the distress was made, and a receipt must be taken.
 - (6) If a claim is made by the financial corporation for whose tax the property was distrained, and the claim is admitted, the surplus must be paid to the financial corporation, and a receipt must be taken.
 - (7) If the claim is contested, the surplus must be retained by the administrator until the rights of the parties have been determined in court or otherwise.

Powers may be exercised separately

- 42** (1) The powers conferred by this Act for the recovery of tax by action in court, by filing a certificate, by distress and by demand may be exercised separately, concurrently or cumulatively.
- (2) The liability of a financial corporation for the payment of the tax under this Act is not affected in any way by the fact that a fine has been paid or a penalty imposed on it for a contravention of this Act.

Limitation period

- 42.1** (1) In this section, "**proceeding**" means
- (a) an action for the recovery of taxes,
 - (b) the filing of a certificate,
 - (c) the making of a demand, and

(d) the registration or enforcement of a lien

under this Act.

- (2) A proceeding may be commenced at any time within 7 years after the date of an assessment or re-assessment of the amount claimed in the proceeding.
- (3) Despite subsection (2), a proceeding that relates to a contravention of this Act or the regulations and that involves willful default or fraud may be commenced at any time.

Method of providing notices and demands

43 (1) A demand and notice, other than a notice of assessment, authorized or required to be given to a person by a public officer under this Act must be in writing, and is sufficiently given if it is personally delivered to the person, or delivered by registered mail addressed to the address stated in the person's last return or to the last address known to the administrator.

(1.1) A demand under section 40 is sufficiently given if it is delivered as set out in subsection (1) of this section or is sent by electronic mail or fax to the electronic mail address or fax number stated in the person's last return or to the last electronic mail address or fax number known to the administrator.

(2) Proof of the receipt by a person of any demand or notice may be established in any court by showing that the notice was delivered, mailed or sent in a manner provided in this section, and the burden of proof is on the person seeking to establish the fact that the demand or notice was not received by the person.

(3) In a prosecution or any proceeding for any matter arising under this Act, the facts necessary to establish

(a) the giving of any demand or notice,

(b) compliance on the part of the administrator or other officer with this Act,
or

(c) the failure of any person to comply with this Act,

may be sufficiently proved in any court by the production of an affidavit of the administrator or other person designated by the minister setting out the facts.

Delegation of powers

44 (1) With the approval of the minister, the administrator may authorize any person acting under the administrator's direction to perform and exercise those duties imposed and powers conferred on the administrator by this Act that the administrator considers may be conveniently performed or exercised by that person.

(2) The performance or exercise of duties or powers by a person authorized under subsection (1) is of the same effect as if they were performed or exercised by the administrator.

Limitation

- 45** An information for an offence against this Act must be laid within 6 years from the time when the matter of the information arose.

Penalty for default

- 46** (1) A financial corporation that fails to deliver a return as and when required by section 18 must pay a penalty of an amount equal to 10% of the tax that was unpaid when the return was required to be delivered.
- (2) A financial corporation that fails to pay the tax due within the period required under sections 18 and 19 must pay a penalty of 10% of the tax that was unpaid.
- (3) A financial corporation that fails to complete the information required on the return to be delivered under section 18 is liable to a penalty of \$50.
- (4) A financial corporation referred to in this section must pay any penalty applicable to it whether or not the financial corporation is also obliged to pay any interest under this Act.
- (5) For every default in complying with section 25 (3), the person in default is liable, in respect of each default, to a penalty equal to the product obtained by multiplying \$25 and the number of days, not exceeding 100, during which the default continues.

Offence and penalty

- 47** (1) Section 5 of the *Offence Act* does not apply to this Act or to the regulations.
- (2) A person who does any of the following commits an offence:
- (a) makes, or participates in, assents to or acquiesces in the making of, false or deceptive statements in a return, certificate, statement or answer delivered or made as required under this Act;
 - (b) in order to evade payment of the tax imposed by this Act, destroys, alters, mutilates, secrets or otherwise disposes of the records of a financial corporation;
 - (c) makes, or assents to or acquiesces in the making of, false or deceptive entries, or omits, or assents to or acquiesces in the omission, to enter a material particular, in the records of a financial corporation;
 - (d) willfully in any manner evades or attempts to evade compliance with or payment of tax imposed by this Act;
 - (e) conspires with any person to commit an offence described in paragraphs (a) to (d).
- (3) In addition to any penalty otherwise provided by this Act, a person who commits an offence referred to in subsection (2) is liable on conviction to a fine of not less than \$25 and not more than \$10 000 plus, in an appropriate case, an amount of not more than double the amount of the tax that should have been shown to be payable or that was sought to be evaded, or to imprisonment for a term of not more than 2 years, or to both a fine and imprisonment.

- (4) For every default in complying with section 25 (1) or (2), 26, 29 or 30, the persons in default are each liable, on conviction, to a penalty of not less than \$10 for each day during which the default continues.
- (5) An officer, director or agent of the financial corporation who directed, authorized, assented to or acquiesced or participated in the commission of the offence is a party to the offence, but this section does not affect the liability of the financial corporation for the same offence.
- (6) A person who contravenes section 9 (11), 22 (3) or 27 commits an offence and is liable to a fine of not more than \$2 000.

Power to make regulations

- 48**
- (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
 - (2) Regulations that may be made under this Act may be made retroactive to April 1, 1992 or such later date as the Lieutenant Governor in Council may determine, and a regulation made retroactive is deemed to come into force on the date specified on the regulation.
 - (3) A regulation under this Act may incorporate by reference, with any changes the Lieutenant Governor in Council considers appropriate, all or any part of a code, rule or standard as published by a provincial, national or international body as amended from time to time before or after the making of the regulation.
 - (4) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
 - (a) prescribing anything that by this Act is to be prescribed or is to be determined by regulation;
 - (b) defining a word or phrase used but not defined in this Act;
 - (c) respecting the delivery of a return or the payment of estimated tax or an installment.