Docket: 2020-208(IT)G

BETWEEN:

POTASH CORPORATION OF SASKATCHEWAN INC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 21, 2022, at Regina, Saskatchewan

Before: The Honourable Justice John R. Owen

Appearances:

Counsel for the Appellant:	Nathalie Goyette Marc Pietro Allard
Counsel for the Respondent:	Courtney Davidson Carla Lamash

JUDGMENT

UPON hearing the evidence and submissions of counsel for the Appellant and counsel for the Respondent;

IN ACCORDANCE with the attached Reasons for Judgment, the appeal from the reassessments that denied the deduction in computing income under the *Income Tax Act* of base payments made to the Province of Saskatchewan under the *Mineral Taxation Act, 1983* (Saskatchewan) for each of the Appellant's 1999 through 2002 taxation years is dismissed with costs to the Respondent.

The Respondent shall have 30 days from the date of this judgment to submit written submissions on costs. The Appellant shall have a further 30 days to provide

written submissions in response to the Respondent's submissions. The written submissions of each party are not to exceed 10 pages.

Signed at Ottawa, Canada, this 7th day of July 2022.

"J.R. Owen"

Owen J

Citation: 2022 TCC 75
Date: 20220707
Docket: 2020-208(IT)G

BETWEEN:

POTASH CORPORATION OF SASKATCHEWAN INC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Owen J

I. Introduction

[1] Potash Corporation of Saskatchewan Inc (the "Appellant") appeals reassessments that denied the deduction in computing income under the *Income Tax Act* (the "ITA") of certain payments made to the Province of Saskatchewan under the *Mineral Taxation Act, 1983* (Saskatchewan) (the "MTA") for each of its 1999 through 2002 taxation years (the "Taxation Years").

II. Facts

[2] At the commencement of the hearing, the parties submitted an Agreed Statement of Facts (Partial), which included two volumes of documents (the "PASF"). I marked the two volumes of documents as exhibit AR-1. I will refer to individual documents in AR-1 by their tab numbers. Appendix A to these reasons reproduces the facts stated in the PASF.

[3] In addition to the PASF, Ms. Trina Heal testified for the Appellant. Ms. Heal is the senior director of tax compliance and reporting for the Appellant. Ms. Heal was not an employee of the Appellant during the Taxation Years, and her testimony was limited to explaining how the Appellant calculated its liabilities under the MTA for the Taxation Years.

A. The Mining Operation of the Appellant

[4] During the Taxation Years, the Appellant was an integrated fertilizer and related industrial and feed products company, with potash mining operations in the province of Saskatchewan. Potash is the common name given to a group of minerals containing potassium.

[5] The mining and processing operations of the Appellant comprised four steps which are, illustrated at tab 1 of AR-1:

1. Mine potash from underground deposits using two- and four-rotor continuous boring machines.

2. Move the mined potash ore by conveyor belt to underground, bins where it is stored.

3. Transport the stored potash ore to a production mineshaft and hoist the potash ore to the surface. This step represents the end of the extraction process.

4. Process the potash ore by crushing, grinding, drying, compacting and crystallizing it. The crystallized form of potash is the product sold by the Appellant.

[6] The Appellant produced potash from mines in Saskatchewan for no purpose other than selling the potash.

B. The Base Payment and the Profit Tax

[7] For each of the Taxation Years, the Appellant paid to the Province of Saskatchewan a base payment calculated in accordance with section 5 of *The Potash Production Tax Schedule* (the "PPTS") and a profit tax calculated in accordance with section 6 of the PPTS and *The Potash Production Tax Regulations* (the "PPTR").

[8] The base payments for the Taxation Years were as follows:

Taxation Year	**Base Payment**
1999	$14,643,226
2000	$16,454,834

2001	$14,673,344
2002	$13,655,538

[9] I will refer to these amounts individually as a "Base Payment" and collectively as the "Base Payments".

[10] The quantum of the Base Payments is not in dispute. The Appellant acknowledged that to the extent that I find that the Base Payments are deductible in computing its income under the ITA, there is a corresponding reduction in the adjusted resource profits of the Appellant for the purposes of computing the resource allowance of the Appellant for the Taxation Years under former paragraph 20(1)(v.1) of the ITA. This concession reflects the direct relationship between the prohibition in paragraph 18(1)(m) and the resource allowance deduction under former paragraph 20(1)(v.1).[1]

[11] The detailed calculations made by the Appellant for the Taxation Years are set out in tabs 16 through 19 of AR-1. Ms. Heal explained that for each of the Taxation Years, the Appellant first computed its liability for the profit tax for the year. This required the Appellant to compute its profits for the year in accordance with the PPTR.[2] The Appellant also used the determination of its profits for the year in the computation of the rate of tax in accordance with subsection 5(3) of the PPTS.

[12] The Appellant filed its federal T2 income tax returns for the Taxation Years on the basis that the Base Payments and the profit tax paid by the Appellant for those years were not deductible in computing its income under the ITA. Following the release of the Tax Court of Canada decision in *Cogema Resources Inc v The Queen*,[3] the Appellant changed its position and sought to deduct the Base Payments. Nothing turns on the fact that the Appellant changed its position regarding the Base Payments.[4]

III. The Submissions of the Parties

A. The Appellant's Submissions

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[1] See the descriptions of the history of these two paragraphs in *Mobil Oil Canada Ltd v The Queen*, 2001 FCA 333 ("*Mobil*") at paragraphs 11 and 12 and in *Teck Corp v British Columbia*, 2004 BCCA 514 ("*Teck*"), leave to appeal to the Supreme Court of Canada refused on April 28, 2005, at paragraphs 8 to 15.
[2] Subclause 6(1)(a)(i) of the PPTS.
[3] 2004 TCC 750 ("*Cogema*"), affirmed 2005 FCA 316.
[4] The Queen v Imperial Oil Limited and Inco Limited, 2003 FCA 289.

[13] The Appellant submits that the Appellant is liable for a "complex web of taxes and levies" applicable to the resource industry in Saskatchewan. Some of these amounts are deductible in computing income under the ITA and some are not.

[14] The Appellant submits that the Base Payments are deductible in computing income under the ITA because the base payment, which is calculated in accordance with section 5 of the PPTS, is incurred for the purpose of gaining or producing income, is not based on the profits of the Appellant, and is not based on potash produced but on potash sold or otherwise disposed of.

[15] The Appellant submits that the base payment and the profit tax are distinct and separate liabilities under the MTA. The Appellant cites *Cogema* as indicative of the distinction between a tax on sales and a tax on production and submits that the calculation of the base payment shows that it is a tax on sales of potash that is deductible in computing income under the ITA.

[16] In particular, the base payment for a year is calculated by applying a rate of tax to the quantity of potash sold or otherwise disposed of by the Appellant in that year. The rate of tax is determined by dividing a prescribed percentage of the Appellant's profits for the year by the tonnes of potash sold or otherwise disposed of by the Appellant in that year. The rate of tax cannot be less than a prescribed minimum rate or greater than a prescribed maximum rate. The Appellant's profits are therefore relevant only to the rate of tax, not to the computation of the base payment.

[17] The Appellant submits that the base payment is an incident of the Appellant's income earning activities and that the calculation of the base payment shows that the base payment is payable regardless of whether the Appellant earns a profit and, citing *Harrods (Buenos Aires), Ltd v Taylor-Gooby (H M Inspector of Taxes*),[5] is therefore not a tax on income. In contrast, the profit tax is payable only if the Appellant earns a profit and is akin to the provincial mining tax addressed by the British Columbia Court of Appeal in *Teck*.

[18] The Appellant submits that paragraph 18(1)(m) of the ITA does not preclude the deduction of the Base Payments. The Appellant cites paragraphs 15, 23 and 24 of *Mobil* for the proposition that paragraph 18(1)(m) applies when two conditions are met:

[5] 41 TC 450 (Eng CA).

a. The payment in issue is in the nature of the payments described in subparagraph 18(1)(m)(ii), that is, "a royalty, tax [. . .] lease rental or bonus or as an amount [. . .] in lieu of any such amount"; and

b. The payment relates to the acquisition, development or ownership of a Canadian resource property or the production in Canada of minerals.[6]

[19] The Appellant submits that the calculation of the base payment shows that the second condition is not satisfied because the payment does not relate to any of the activities described by that condition.

[20] First, the acquisition, development or ownership of a Canadian resource property does not result in liability for a base payment. Second, the production of potash in and of itself does not result in liability for a base payment. This distinguishes the base payment from the royalty payable to Saskatchewan on all potash extracted, recovered or produced under leases granted by Saskatchewan.

[21] Finally, the Appellant submits that contrary to the position of the Respondent, the text and effect of subsection 92A(4) of the *Constitution Act, 1867* do not necessitate that if the base payment is not an income or profit tax, it must be a tax on production. The subsection empowers Saskatchewan to make laws in relation to the raising of money by any mode or system of taxation in respect of non-renewable natural resources. The power is broadly worded, and there are several examples of taxes levied by Saskatchewan in respect of non-renewable natural resources that do not fall into either of the two categories suggested by the Respondent.

[6] Appellant's Written Submissions, paragraph 57.

B. The Respondent's Submissions

[22] The Respondent submits that the history of resource taxation in Canada and in Saskatchewan provides important context to the interpretation of the MTA. Prior to 1982, provinces were restricted to two methods of raising revenues from natural resources in the province: royalties on production from resources in which the province had a proprietary interest and "direct" taxes on producers within the province. In 1982, subsection 92A(4) was added to the *Constitution Act, 1867* to empower each province to impose indirect taxes on resource production within the province. The Respondent submits that Saskatchewan enacted the PPTS to tax all potash produced within its borders.

[23] Prior to May 6, 1974, a payor could deduct in computing income under the ITA a royalty paid to a province but could not deduct an income or profit tax paid to a province. To protect the federal tax base, paragraph 18(1)(m) of the ITA was enacted on May 6, 1974, to disallow the deduction in computing income under the ITA of all provincial royalties and taxes in relation to resource production.

[24] Citing section 4 of the MTA, the Respondent submits that the MTA imposes a "mineral production tax" on "the production or sale or other disposition of each scheduled mineral produced in Saskatchewan." By virtue of subsection 2(3) of the MTA, the use or consumption of a scheduled mineral such as potash is deemed to be a sale or other disposition of that mineral.

[25] The PPTS and the PPTR detail how the base payment and the profit tax are applied and calculated. The Respondent summarizes the pertinent provisions as follows:

a. Subsection 3(1) of the PPTS applies the mineral production taxes imposed by the MTA to all potash that is produced from any lands in Saskatchewan and that is sold or otherwise disposed of on or after January 1, 1990.

b. Subsection 3(2) of the PPTS states that each producer is liable for the mineral production taxes imposed by the MTA on the sale or other disposition of potash produced from the mine or mines with respect to which that person is a producer.

c. Clauses 2(a) and (d) of the PPTS define "mine" and "producer". The term "mine" means any opening in or excavation of the ground in

Saskatchewan from which potash is or is capable of being produced. The term "producer" means a person who has the right to produce and sell or otherwise dispose of potash from a mine, whether that person does so himself or herself or through any other person.

d. Clause 2(1)(x) of the PPTR defines "disposition" to mean (i) any transaction or event with respect to an asset that entitles a producer to proceeds of disposition; (ii) any transfer of an asset by way of gift; or (iii) the removal, other than a temporary removal, of an asset from a mine for any reason.

e. Clause 2(1)(mm) of the PPTR defines "proceeds of disposition" to mean the fair market value of an asset disposed of in specified circumstances such as a non-arm's length disposition by a producer.

f. Subsection 2(2) of the PPTR states that "produced" means extracted from the ground and includes "treated" as defined in clause 2(1)(yy) and stored and shipped in Saskatchewan or with the prior written approval of the minister (defined in clause 2(1)(h) of the MTA) outside Saskatchewan.

[26] The Respondent submits that the base payment and the profit tax are created under the same enabling provisions of the MTA and notes that section 4 of the PPTS provides that the "mineral production taxes" imposed by the MTA consist of the base payment and the profit tax. The base payment is a tax on 35% of a potash producer's profits from potash, subject to a minimum and maximum amount, and is paid only after the sale or other disposition of the potash. Consequently, the income earning process is complete before the base payment becomes payable by the Appellant.

[27] The Respondent cites *Roenisch v MNR*,[7] *First Pioneer Petroleums Ltd v MNR*[8] and *Munich Reinsurance Company (Canada Branch) v R*[9] for the proposition that paragraph 18(1)(a) of the ITA prohibits the deduction of income or profit-based taxes in computing income under the ITA and cites *Quemont Mining Corp v MNR*,[10] *Nickel Rim Mines Ltd v Ontario (Attorney General)*[11] and *Teck* for the proposition

[7] (1930) [1931] Ex CR 1 ("*Roenisch*").
[8] [1974] CTC 108 (FCTD) ("*First Pioneer*").
[9] 2001 FCA 365 ("*Munich Reinsurance*").
[10] (1966) [1967] 2 Ex CR 169 ("*Quemont*").
[11] (1965) [1966] 1 OR 345 ("*Nickel Rim*").

that this principle applies to provincial mining taxes that are based on income or profit.

[28] The Respondent cites *Teck* for the additional proposition that a legislature does not have to compute income in a specific manner for a tax to be a tax on income and *Quemont* for the proposition that a tax may be an income or profits tax even though it is based on an estimate of profits.

[29] The Respondent submits that the Appellant's characterization of the base payment as a tax on sales is flawed. A sales tax is paid by the purchaser of a product while the base payment is a direct tax on a producer of potash in Saskatchewan.

[30] The Respondent submits that even if the base payment is not an income or profits tax, the deduction of the base payment in computing income under the ITA is prohibited by paragraph 18(1)(m) of the ITA. The Respondent submits that the application of paragraph 18(1)(m) to the base payment is consistent with the text, context and purpose of the provision.

[31] The Respondent submits that the decision in *Cogema* is not applicable as the statutory regime addressed in that case is different from the regime in the MTA. In particular, the regime addressed in *Cogema* applied only to sales of uranium, while the regime in the MTA applies to all potash produced in Saskatchewan that is sold or otherwise disposed of, which includes potash used or consumed by the producer.

IV. The Statutory Provisions

A. The Relevant Provisions of the ITA

[32] The provisions of the ITA relevant to the issue in this appeal are reproduced in the analysis section of these reasons.

B. The Relevant Provisions of the MTA

[33] The provisions of the MTA relevant to the issue in this appeal are reproduced in Appendix B to these reasons.

V. Analysis

[34] The Appellant submits that the Base Payments are deductible in computing its income under subsection 9(1) of the ITA and that paragraphs 18(1)(a) and 18(1)(m) of the ITA do not apply to the Base Payments. The Respondent submits that the Base Payments are not deductible in computing income because either paragraph 18(1)(a) or 18(1)(m) of the ITA, or both of those paragraphs, applies to the Base Payments. I will therefore address each of these provisions of the ITA.

A. The Deduction of Business Expenses under Subsection 9(1) and Paragraph 18(1)(a) of the ITA

[35] Subsection 9(1) states:

> 9(1) Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.

[36] Paragraph 18(1)(a) states:

> 18(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of
>
> > (a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

[37] In *Symes v The Queen*,[12] the Supreme Court of Canada confirmed that because profit is a net concept, subsection 9(1) authorizes the deduction of business expenses while subsection 18(1) is limiting only. Iacobucci J, writing for the majority, states:

> In other words, the "profit" concept in s. 9(1) is inherently a net concept which presupposes business expense deductions. It is now generally accepted that it is

[12] [1993] 4 SCR 695 ("*Symes*").

> s. 9(1) which authorizes the deduction of business expenses; the provisions of s. 18(1) are limiting provisions only.[13]

[38] Iacobucci J addresses the relationship between subsection 9(1) and paragraph 18(1)(a) as follows:

> . . . the well accepted principles of business practice encompassed by s. 9(1) would generally operate to prohibit the deduction of expenses which lack an income earning purpose, or which are personal expenses, just as much as ss. 18(1)(*a*) and (*h*) operate expressly to prohibit such deductions. For this reason, there is an artificiality apparent in the suggestion that one can first examine s. 9(1) in order to determine whether a deduction is authorized, and can then turn to s. 18(1) where another analysis can be undertaken . . . .
>
> Although ss. 18(1)(*a*) and (*h*) may, therefore, simply be analytically repetitive or confirmatory of prohibitions already embodied in s. 9(1), they may serve to reinforce the point already made, namely, that the s. 9(1) test is a legal test rather than an accountancy test. At the same time, they conveniently summarize what might otherwise be abstract principles of commercial practice. . .
>
> There is no doubt that, in some cases, s. 9(1) will operate in isolation to scrutinize deductions according to well accepted principles of business practice. In this respect, I refer to cases, also noted by the trial judge, in which the real issue was whether a particular method of accounting could be used to escape tax liability . . . . In other cases, including the present case, however, the real issue may be whether a deduction is prohibited by well accepted principles of business practice <u>for the reason</u> that it is not incurred for the purpose of earning income, or <u>for the reason</u> that it is a personal or living expense. In such cases, any treatment of the issue will necessarily blur s. 9(1) with ss. 18(1)(*a*) and (*h*).[14]

[39] The courts have consistently held that tax imposed upon the income of a taxpayer is not deductible in computing the income of that taxpayer under the ITA. In *Munich Reinsurance*, Sharlow JA stated this principle in the following terms:

> In support of that proposition, the appellant cites the well established principle that **the payment of income tax <u>is not an expenditure made for the purpose of earning income</u>** because it is an expenditure of income already earned: *Roenisch v. M.N.R.*, [1931] Ex. C.R. 1, [1931] 2 D.L.R. 90, 1 D.T.C. 199, *First Pioneer*

[13] Ibid, page 722. See, also, page 725 and L'Heureux-Dubé J's comments in dissent at page 788. Iacobucci J, writing for a unanimous Court, restated his comments in *Symes* regarding subsection 9(1) of the ITA in *Canderel Limited v The Queen*, [1998] 1 SCR 147 at paragraph 31.

[14] Ibid, pages 723h to 725b.

> *Petroleums Ltd. v. M.N.R.* [1974] C.T.C. 108, 74 D.T.C. 6109, 43 D.L.R. (3d) 722 (F.C.T.D.). The validity of this principle cannot be challenged . . . .[15]

[Emphasis and double emphasis added.]

[40] An expenditure of the income that has been determined for a taxation period cannot be incurred as part of the process of earning that income and therefore runs afoul of both the general deductibility rule in subsection 9(1) and the prohibition in paragraph 18(1)(a).

[41] Provincial income taxes imposed by "agreeing" provinces[16] provide a particularly clear example of the application of this principle because such provinces start with taxable income under the ITA and apply their own rules to the taxation of that amount. Consequently, there is no doubt that the imposition of the provincial income tax follows the income earning process for the taxation period and therefore is an expenditure of the income already determined for that period.[17]

[42] However, while income taxes provide a clear example of taxes that are not incurred as part of the process of earning income but following that process, the determination of the deductibility of an expenditure that is in the nature of a tax does not rest on the characterization of that expenditure as an income tax, but on the more basic question—stated by paragraph 18(1)(a) of the ITA—of whether the expenditure was made or incurred for the purpose of gaining or producing income from a business or property.

[43] This general proposition was clearly articulated by Sharlow JA in the excerpt from *Munich Reinsurance* reproduced above. Sharlow JA cites the seminal Canadian decision of the Exchequer Court of Canada in *Roenisch*, in which Audette J states:

> It is self-evident that the amount of the income tax paid to the province **is not an expense for the purpose of earning the income, within the meaning of 6*a*** [the predecessor to paragraph 18(1)(a) of the ITA]. When such payment of taxes is made to the province**, it is not so made to earn the income**, it is paid because there is an income showing gain and profit.[18]

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[15] *Munich Reinsurance* at paragraph 26.
[16] That is, provinces that have entered into an agreement with the federal government regarding the collection and administration of income taxes.
[17] Of course, such earned income (i.e., retained earnings) can be expended in a future taxation period in the process of earning income for that future period.
[18] *Roenisch*, page 4.

[Emphasis added.]

[44] In *Teck*, the appellant argued that provincial mining taxes were in the nature of a royalty and therefore were deductible as an outlay or expense made or incurred for the purpose of gaining or producing income. The Crown argued that mining taxes were income taxes and that a levy in the nature of an income tax was not an expense or outlay incurred for the purposes of earning income. Lowry J of the British Columbia Supreme Court and Levine JA writing for the British Columbia Court of Appeal both agreed with the Crown.

[45] Because the respective positions of the appellant and the Crown turned on the characterization of the mining taxes in issue, Levine JA considered the correct legal characterization of those taxes[19] and found that they were taxes on income.[20] Levine JA then states:

> I therefore conclude that the Extra-Provincial Mining Taxes are income taxes, which, in accordance with wording of the various iterations of the federal Act and the authorities, **were not deductible in computing income under s. 18(1)(a) of the federal Act <u>because they were not outlays or expenses incurred for the purpose of gaining or producing income</u>**.[21]

[Emphasis and double emphasis added.]

[46] On the basis of the foregoing, the question that must be addressed is whether, as implicitly required by subsection 9(1) of the ITA and explicitly required by paragraph 18(1)(a) of the ITA, the Base Payments were incurred by the Appellant for the purpose of gaining or producing income from its business of mining, producing and selling potash. This determination requires consideration of the provisions in the MTA imposing liability on the Appellant for the Base Payments. These provisions are reproduced in Appendix B.

[47] For ease of reference, I will reproduce the main charging provisions in the MTA here. Clauses 2(1)(e), (k), (l) and (m), subsections 2(2) and 2(3), and sections 4 and 5 of the MTA state:

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[19] Levine JA holds that "the determination of the nature of the mining taxes involves a question of law": *Teck* at paragraph 36.
[20] *Teck* at paragraph 48.
[21] Ibid at paragraph 51. See, also, paragraph 32 of *Teck*, where Levine JA states:
"The authorities clearly establish that a levy in the nature of an income tax is not an expense or outlay incurred for the purposes of earning income, and therefore would not be deductible by virtue of s. 18(1)(a)".

Interpretation

2(1) In this Act:

. . .

(e) "mineral production tax" means any tax imposed by this Act on the production or sale or other disposition[22] of a scheduled mineral;

. . .

(k) "prescribed" means prescribed in the regulations;

(l) "Schedule" means a schedule to this Act;

(m) "scheduled mineral" means any mineral in respect of which a Schedule to this Act is enacted;

. . .

(2) Any word or expression used in this Act but not defined in this Act may be defined in the regulations.

(3) The use or consumption of a scheduled mineral by a person who is liable to pay the mineral production taxes imposed by this Act on the production or sale or other disposition of that scheduled mineral is deemed to be a sale or other disposition of that scheduled mineral.

. . .

Mineral production taxes

4 A tax is hereby imposed on the production or sale or other disposition of each scheduled mineral produced in Saskatchewan.

Calculation and payment of taxes

5 The mineral production taxes imposed by this Act on the production or sale or other disposition of a scheduled mineral are to be levied, calculated and paid in the manner and at the times required by or under the Schedule enacted in respect of that scheduled mineral.

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[22] Subsection 2(3) was added to the MTA and the words "or sale or other disposition" were added to clause 2(1)(e) and sections 4, 5 and 6 of the MTA by *The Mineral Taxation Amendment Act, 1989*, assented to on August 25, 1989 (the "MTAA 1989").

[48] Section 4 of the MTA imposes a tax on the "production or sale or other disposition of" a scheduled mineral produced in Saskatchewan, and any such tax is defined in clause 2(1)(e) of the MTA as a "mineral production tax".

[49] The words "or sale or other disposition" were not in the MTA as enacted in 1983 but were added as part of amendments under the MTAA 1989; these amendments added to the MTA the Second Schedule, which taxes sodium chloride, and the PPTS, which taxes potash. Consistent with the rules of grammar, the use of the word "or" preceding the word "sale" and the fact that the word "production" previously stood on its own suggest that the words "sale or other disposition" are intended to describe events that follow production.

[50] Under the PPTS, the application of the base payment and the application of the profit tax are each conditional on the occurrence of two events: production of the potash followed by the sale or other disposition of the potash.[23]

[51] According to the PASF, the production of potash is complete following the crushing, grinding, drying, compacting and crystallizing of the ore extracted from the mines in Saskatchewan. The Appellant produces all its potash for the purpose of sale.

[52] By way of contrast, the First Schedule to the MTA applies the "mineral production taxes" imposed by section 4 of the MTA to the production of all freehold coal produced in Saskatchewan on or after January 1, 1984,[24] and then calculates that tax by multiplying the net value of the freehold coal produced from a mine that is "sold, used, consumed or otherwise disposed of" by a rate of tax.[25]

[53] Notwithstanding the semantic differences between the provisions taxing coal and the provisions taxing sodium chloride and potash, each schedule to the MTA imposes tax on the sale, use, consumption or other disposition of a mineral produced from a mine in Saskatchewan.

[54] Section 4 of the PPTS states that the mineral production taxes imposed by section 4 of the MTA "on the sale or other disposition of potash" consist of a base

[23] The application of the mineral production tax imposed by the MTA to sodium chloride is subject to the same conditions: section 3 of the Second Schedule.
[24] Section 6 of the First Schedule.
[25] Section 7 of the First Schedule.

payment calculated in accordance with section 5 of the PPTS and a profit tax calculated in accordance with section 6 of the PPTS.

[55] Under subsection 5(2) of the PPTS, the base payment for a particular year is determined by multiplying the quantity of the potash sold or otherwise disposed of by the producer in the year (expressed in tonnes) by a calculated tax rate that is subject to a prescribed maximum[26] and a prescribed minimum,[27] and then deducting the total of any applicable deductions, allowances and credits that are prescribed[28] or provided for in the PPTS.

[56] Under subsection 5(3) of the PPTS, the calculated tax rate (R) is expressed in dollars per tonne of potash sold or otherwise disposed of and is equal to a prescribed percentage[29] of the producer's profits for the year (P), expressed in dollars, divided by the quantity in tonnes of potash sold or otherwise disposed of by the producer in that year (Q).

[57] The terms "P", "Q" and "R" are defined in subsection 5(1) of the PPTS. The definition of "R" in clause 5(1)(c) of the PPTS does not make sense because subclause 5(2)(a)(i) of the PPTS refers not only to the rate of tax calculated under subsection 5(3) of the PPTS, but also to the maximum and minimum rates of tax under subsections 5(4) and 5(5) of the PPTS. This anomaly does not alter my analysis of the PPTS.

[58] According to Ms. Heal and tabs 16 through 19 of exhibit AR-1, the Appellant calculated the rate of tax under subsection 5(3) of the PPTS ignoring the maximum and minimum rates of tax and then determined whether the maximum or minimum rate under subsections 5(4) and 5(5) of the PPTS superseded the calculated rate. The Appellant's determination of the calculated rate of tax under subsection 5(3) of the PPTS for each of the Taxation Years is not in issue.

[59] The rate of tax that applied to determine the Base Payment in each of the Taxation Years was the maximum rate under subsection 5(4) of the PPTS and section 13 of the PPTR.[30] I note, however, that if the calculated rate of tax determined

[26] Subsection 5(4) of the PPTS and section 13 of the PPTR.
[27] Subsection 5(5) of the PPTS and section 14 of the PPTR.
[28] Sections 12 and 20 of the PPTR.
[29] Under subsection 10(1) of the PPTR, the prescribed is percentage is 35%.
[30] Tabs 16 through 19 of exhibit AR-1.

by subsection 5(3) of the PPTS had applied, the Base Payment would in effect be 35% of profits less the permitted deductions, allowances and credits.[31]

[60] Under subsections 5(4) and 5(5) of the PPTS and sections 13 and 14 of the PPTR, the maximum and minimum rates of tax are $12.33 per tonne and $11.00 per tonne, respectively.

[61] Section 5 of the PPTS does not specify how the profits of a producer are determined for the purposes of the calculations in subsections 5(1) through 5(5). However, section 6 of the PPTS specifies in subclause 6(1)(a)(i) that profits for a year are to be determined in accordance with the PPTR.

[62] Considering the context of section 5 of the PPTS and the interpretive rule in subsection 2(2) of the MTA, the only sensible interpretation is that the Saskatchewan legislature intended that the profits referenced in section 5 of the PPTS be the same as the profits of the Appellant determined in accordance with the PPTR for the purposes of section 6 of the PPTS. Ms. Heal testified that that is how the Appellant approached the calculations.

[63] Two of the three components[32] that determine the amount of a base payment of a producer for a year are the quantity of potash sold or disposed of by the producer in the year and the rate of tax in dollars per tonne for the year. By virtue of subsection 2(3) of the MTA, the former includes not only potash in fact sold or otherwise disposed of by the producer, but also potash that is used or consumed by the producer. Subsection 2(3) ensures that the words "sold or otherwise disposed of" encompass every way in which a producer may ultimately deal with potash mined and produced in Saskatchewan.

[64] To compute the amount of a base payment for a year, a producer must first compute its profits for that year in accordance with the PPTR. This is because it is not possible to determine the applicable rate of tax under subclause 5(2)(a)(i) of the PPTS without first determining the calculated tax rate under subsection 5(3) of the PPTS. "P" of the formula used in subsection 5(3) is "the amount in dollars equal to the prescribed percentage of the producer's profits for a year". If profits for a year

[31] This is because the quantity used to determine the calculated rate of tax and the quantity used to determine the Base Payment cancel each other out, leaving only the prescribed amount of profits for the year less the permitted deductions, allowances and credits.

[32] The third component is the total of any applicable deductions, allowances and credits that are prescribed or provided for in the PPTS.

are zero, the calculated rate of tax under subsection 5(3) of the PPTS is also zero and the minimum tax rate under subsection 5(5) of the PPTS applies.

[65] Liability for a base payment will exist only in respect of potash that has been "sold or otherwise disposed of" by a producer, which includes use or consumption by the producer. Such potash is no longer in the inventory of the producer, so it is no longer capable of producing income for the producer.

[66] These two aspects of the base payment suggest to me that the base payment only arises after the conclusion of the producer's income earning process in respect of potash subject to the base payment tax. The same is true for the taxes imposed by the First Schedule and the Second Schedule of the MTA.

[67] Specifically, there must be a realization event (a sale or other disposition of potash) before liability for a base payment can exist. Consequently, a base payment does not represent an amount paid to Saskatchewan by a producer to earn income from potash mined in Saskatchewan because liability for the tax is neither a precursor to nor a requirement for the earning of income from mining and producing potash in Saskatchewan. It is rather a liability to Saskatchewan that arises following the utilization of the potash by the producer by sale or other disposition.

[68] This is illustrated by the fact that potash mined and produced in Saskatchewan that is stored by a producer for sale or other disposition in a future year is not subject to the mineral production taxes imposed by the MTA and the PPTS until that future year. The liability for the mineral production tax on that potash clearly follows and does not contribute to the earning of income from mining and producing the potash.

[69] Based on the overall structure of the MTA and the PPTS, it is reasonable to conclude that the base payment is imposed on a quantity of potash sold or disposed of in a year rather than on profits for that year to ensure that a minimum amount of tax is paid by a producer of potash mined in Saskatchewan that has sold or disposed of that potash. Consequently, an absence of profits for a year does not affect whether a producer is liable for a base payment in respect of that year.

[70] The fact that the base payment is determined by reference to a quantity of potash does not preclude the base payment from being a tax on income. As stated by Levine JA in *Teck*:

> 49 As Lord Macnaghten said in *London County Council v. Attorney-General*, [1901] A.C. 26 at 35: "Income tax, if I may be pardoned for saying so, is a tax on

> income." In that case, the question was whether a tax was an income tax, although it was levied on the annual value of land. Lord Davey commented (at p. 45):
>
> The truth is that the income tax is intended to be a tax upon a person's income or annual profits, and although (for conceivable and no doubt good reasons) it is imposed in respect of the annual value of land, that arrangement is but the means or machinery devised by the Legislature for getting at the profits.
>
> 50 The fact that the income calculated under the provincial mining statutes does not reflect "income" as calculated under the federal Act has no bearing on the characterization of the mining taxes as income taxes. . . . . [33]

[71] The base payment is a tax on an estimate of the value contributed to a producer's business by potash sold or otherwise disposed of by that producer that applies even if the producer does not have profits for the year under the PPTR. In *Teck*, Levine JA observed:

> 39 In his analysis of the Quebec mining taxes [in *Quemont*, aff'd *Rio Algom Miners Limited v Minister of National Revenue* [1970] S.C.R. 511], Cattanach J. considered that the statutory formula for determining "profits" included the "gross value" of ore that had been "sold, utilized or shipped", with the result that part of the profit may not have been realized. Relying on the decision of the Ontario Court of Appeal in *Nickel Rim Mines Ltd. v. Ontario (Attorney General)* (1965), [1966] 1 O.R. 345 (Ont. C.A.), where Porter C.J.O. for the Court stated (at p. 363): "Although the tax in part may be upon profits estimated before actual sale, I do not think that the nature of the tax is thereby affected . . . ", Cattanach J. concluded that a tax on realized and estimated profits was a tax on income.[34]

[72] I similarly conclude based on the scheme in the MTA and the PPTS that the base payment and the profit tax are taxes on the income of a producer from sales or other dispositions of potash mined in Saskatchewan. The Saskatchewan legislature simply chose in the case of the base payment to substitute quantity of potash as a proxy for income to ensure that a minimum amount of tax would be collected in respect of such potash even if the producer did not have profits for the year as determined under the PPTR.[35]

[73] Even if the base payment is not a tax on income or profit as such, that does not alter the fact that the base payment is not incurred by the Appellant for the purpose

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[33] *Teck* at paragraphs 49 and 50.
[34] *Teck* at paragraphs 38 and 39.
[35] The Saskatchewan legislature took the same approach to the taxation of sodium chloride under section 4 of the Second Schedule, which imposes a tax rate on "the quantity of dry sodium chloride produced from" a mine in Saskatchewan "that is sold or otherwise disposed of" by the producer.

of gaining or producing income from its potash mining business; rather, it is a tax that is applied only after the conclusion of the process of earning income from that business. As already stated, this conclusion is amply supported by the fact that the base payment applies only after a sale or other disposition of potash by the Appellant, by the fact that the profits of the Appellant for a taxation year from the same sales or other dispositions of potash must be calculated before the base payment for that year can be determined, and by the fact that the payment of the base payment is not a condition for mining potash in Saskatchewan or for producing and selling or disposing of that potash.

B. The Prohibition in Paragraph 18(1)(m) of the ITA

[74] The foregoing conclusion negates the need to consider the prohibition in paragraph 18(1)(m) of the ITA. However, to be complete, I will also address that paragraph.

[75] Two versions of paragraph 18(1)(m) are relevant to the Taxation Years. For amounts that became payable on or before December 20, 2002, paragraph 18(1)(m) of the ITA stated:

> 18(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of
>
> . . .
>
> (m) any amount (other than a prescribed amount) paid or payable by virtue of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute to
>
> (i) Her Majesty in right of Canada or a province,
>
> (ii) an agent of Her Majesty in right of Canada or a province, or
>
> (iii) a corporation, commission or association that is controlled by Her Majesty in right of Canada or a province or by an agent of Her Majesty in right of Canada or a province
>
> as a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that can reasonably be regarded as being in lieu of any such amount, or in respect of the late payment or non-payment

> of any such amount, and that can reasonably be regarded as being in relation to
>
> > (iv) the acquisition, development or ownership of a Canadian resource property, or
> >
> > (v) the production in Canada
> >
> > > (A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada or from an oil or gas well located in Canada,
> > >
> > > (B) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada,
> > >
> > > (C) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada,
> > >
> > > (D) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada, or
> > >
> > > (E) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from tar sands from a mineral resource located in Canada;

[76] For amounts that became payable after December 20, 2002, paragraph 18(1)(m) of the ITA stated:

> 18(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of
>
> . . .
>
> (m) any amount (other than a prescribed amount)
>
> > (i) that is paid or payable in the year to
> >
> > > (A) Her Majesty in right of Canada or of a province,

(B) an agent of Her Majesty in right of Canada or of a province, or

(C) a corporation, a commission or an association that is controlled by Her Majesty in right of Canada or of a province or by an agent of Her Majesty in right of Canada or of a province, and

(ii) that can reasonably be considered to be a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus, however described, or to be in respect of the late payment or non-payment of any of those amounts, in relation to

(A) the acquisition, development or ownership of a Canadian resource property, or

(B) the production in Canada

(I) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada, or from an oil or gas well located in Canada,

(II) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada,

(III) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada,

(IV) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada, or

(V) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related

> hydrocarbons from a deposit located in Canada of bituminous sands or oil shales;[36]

[77] The parties focused on the first version of paragraph 18(1)(m) no doubt because the second (newer) version applies only to the last 10 days of 2002. I will similarly focus on the first version of paragraph 18(1)(m). I note, however, that the second version is on its face broader in scope than the first version.[37]

[78] There is no dispute that the Base Payments are each a tax imposed by statute that is paid by the Appellant to Her Majesty in right of Saskatchewan. Consequently, the only question is whether the Base Payments "can reasonably be regarded as being in relation to" the acquisition, development or ownership of a Canadian resource property, or the production in Canada to any stage that is not beyond the prime metal stage or its equivalent of minerals from a mineral resource located in Canada.[38]

[79] The Appellant relies on *Cogema* for the proposition that the base payment required by the PPTS is a tax in relation to sales and therefore is not a tax in relation to production. In my view, the base payment is not a sales tax in the generally understood sense because it is a tax on the producer selling or otherwise disposing of its potash rather than a tax on the consumer of that potash. Moreover, the notion that the base payment is a tax on sales is unhelpful because many businesses generate their income from sales of something, so that characterization does not assist in assessing the legal nature of the base payment. For example, a tax on gross revenues from the sale of property or services could be described as a tax on sales.

[80] Even if I accept that the characterization of the base payment as a tax on sales is relevant to the legal nature of the base payment, which is a question of law,[39] *Cogema* does not assist the Appellant because it addresses a different statutory regime that was focused solely on sales. By virtue of the words "sold or otherwise disposed of" in subclause 5(2)(a)(ii) of the PPTS and the deeming rule in subsection 2(3) of the MTA, the MTA and the PPTS apply to all means (including consumption or use) by which potash mined in Saskatchewan may be utilized by a

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[36] Paragraph 18(1)(m) was subject to prorating rules from 2003 through 2006 and was repealed for taxation years that began after 2006.

[37] For example, the second version does not have a requirement that the liability for the amount in issue be imposed by statute or a contractual obligation substituted for a statutory obligation.

[38] The question is essentially the same under the second version except that to be caught, it is necessary that the base payment "can reasonably be considered" to be a tax "in relation to" the acquisition, development or ownership of a Canadian resource property, or the production in Canada to any stage that is not beyond the prime metal stage or its equivalent of minerals from a mineral resource located in Canada.

[39] *Teck* at paragraph 36.

producer. Consequently, in response to the question posed by the Tax Court judge in paragraph 12 of *Cogema*, the answer in this case would be yes.

[81] The fact that the Appellant only sells its potash is not relevant to whether paragraph 18(1)(m) of the ITA applies to a base payment imposed by the MTA and the PPTS. It is the provisions of the MTA and the PPTS that determine whether paragraph 18(1)(m) of the ITA applies to a payment under the MTA and the PPTS, not the behaviour of a particular taxpayer.

[82] The words "can reasonably be regarded as being in relation to" require that for paragraph 18(1)(m) of the ITA to apply to the Base Payments, an objective assessment of the circumstances must show that each of the Base Payments "relate[s] to"[40] (i.e., has a "connexion, correspondence or association"[41] to) the production in Canada of potash.

[83] The question, therefore, is whether a "sale or other disposition of" potash mined by the Appellant in Saskatchewan relates to the production of that potash. The Appellant submits that the production of potash and the "sale or other disposition of" potash are separate events and that paragraph 18(1)(m) of the ITA applies to the production of potash but not to the sale or other disposition of that potash. While I agree that production and sale are separate events, I do not agree that one is not "in relation to" the other.

[84] In *Echo Bay Mines Ltd v Canada (T.D.)*, [1992] 3 F.C. 707 ("*Echo Bay*"), the Court considered what was meant by "incomes . . . from . . . the production and processing" in the definition of "gross resource profits" in subsection 1204(1) of the *Income Tax Regulations* (the "ITR").[42] The Court observed:

> Production activities yield no income without sales. Activities reasonably interconnected with marketing the product, undertaken to assure its sale at a satisfactory price, to yield income, and hopefully a profit, **are, in my view,**

[40] *Mobil* at paragraph 24.
[41] See definition 3a of "relation" in the *Oxford English Dictionary* (2nd ed).
[42] The determination of gross resource profits is a step in calculating the resource allowance deduction allowed under former paragraph 20(1)(v.1) of the ITA. As noted in the discussion of the history of paragraph 18(1)(m) in *Mobil* and *Teck* cited above, paragraph 20(1)(v.1) was enacted as partial relief from the prohibition in paragraph 18(1)(m). Consequently, the definition of "gross resource profits" is part of the wider context within which paragraph 18(1)(m) exists in the ITA.

> **activities that form an integral part of production** which is to yield income, and resource profits, within Regulation 1204(1).[43]
>
> [Emphasis added.]

[85] Subsection 1204(1) of the ITR does not include connecting language such as "in relation to", yet the Court in *Echo Bay* had no difficulty finding that interconnected activities necessary to realize income from production are integral to production.

[86] I similarly have no difficulty concluding that a "sale or other disposition of" potash is an activity that relates to the production of that potash. There is a direct and immediate connection between the production of potash and the subsequent sale or disposition of that potash. To find otherwise would be to ignore the commercial objective of any mining venture, which is to mine and produce minerals to obtain the value of those minerals through sale, consumption, or use. The fact that the base payment arises after a sale or other disposition of potash does not preclude it being in relation to the production of that potash.[44]

[87] The application of paragraph 18(1)(m) to the Base Payments is consistent with the broad purpose of paragraph 18(1)(m) identified by the Minister of Finance when introducing the new rule to Parliament in May 1974:

> . . . I am proposing that **revenues derived by provincial governments in respect of production from a petroleum or mineral resource** should no longer be deductible in computing the income of the operator of the resource.[45]
>
> [Emphasis added.]

[88] The application of paragraph 18(1)(m) to the Base Payments is also consistent with Sharlow JA's general observation in *Mobil* that "paragraph 18(1)(m) deals fundamentally with payments to the Crown."[46] The Base Payments are payments by the Appellant to the Crown in right of Saskatchewan that are inextricably linked to mining and producing potash in Saskatchewan.

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[43] Page 732. The Federal Court of Appeal confirmed that this approach applied to the definition of "gross resource profits" in *The Queen v 3850625 Canada Inc*, 2011 FCA 117 ("3850625 Canada") at paragraphs 17 to 21.
[44] *3850625 Canada* at paragraph 24.
[45] "Budget Speech" *Hansard, House of Commons Debates*, 29-2 No 2 (6 May 1974) at 2080 (Hon. John Turner, Minister of Finance).
[46] *Mobil* at paragraph 20.

VI. Conclusion

[89] For the foregoing reasons, the appeal of the Appellant is dismissed with costs to the Respondent. The Respondent has 30 days from the date of the judgment to provide written submissions on costs not to exceed 10 pages. The Appellant has a further 30 days to provide written submissions in response to the Respondent's submissions. No further submissions by either party are to be made.

Signed at Ottawa, Canada, this 7th day of July 2022.

"J.R. Owen"

Owen J

APPENDIX A

The following is a reproduction of the Agreed Statement of Facts (Partial) submitted by the parties.

IDENTITY OF APPELLANT

1. Potash Corporation of Saskatchewan (the "**Crown Corporation**") was initially created as a Saskatchewan crown corporation in 1975.

2. On November 2, 1989, the Crown Corporation was privatized whereby its assets were transferred to Potash Corporation of Saskatchewan Inc. ("**PCS**" or the "**Appellant**"), which became a public corporation.

3. The Appellant is a corporation continued under the *Canada Business Corporations Act*[1] and is a taxable Canadian corporation for purposes of the *Income Tax Act.*[2]

4. On January 1, 2018, Nutrien Ltd. indirectly acquired the shares of each the Appellant and Agrium Inc. upon their merger of equals, to become the new publicly listed parent of the combined group.

RELEVANT TAXATION YEARS

5. The current appeal concerns the taxation years ended December 31,

   a. 1999 (the "**1999 TY**");
   b. 2000 (the "**2000 TY**");
   c. 2001 (the "**2001 TY**"); and
   d. 2002 (the "**2002 TY**").

6. Collectively, these taxation years are referred to as the "**Taxation Years**" or the "**Relevant Period**").

[1] RSC 1985, c C-44.
[2] RSC 1985, (5th Supp), c 1 [the "Income Tax Act"].

THE APPELLANT

The Appellant's Business

7. During the Relevant Period, the Appellant was an integrated fertilizer and related industrial and feed products company, with potash mining operations in the province of Saskatchewan.

Potash Production

8. Potash is the common name given to a group of minerals containing potassium, which is essential to all forms of plant and animal life.

9. During the Relevant Period, the mining operations of the Appellant consisted of producing potash.

10. Producing potash means extracting potash from the ground and processing same at mine facilities.

11. More specifically, producing potash can be described in the following steps illustrated in a diagram titled "What is potash and where does it come from?"[3]:

    a. first, potash is mined underground from deposits using two- and four-rotor continuous boring machines;

    b. second, conveyor belts carry potash ore to underground bins, where it is stored until transportation to the loading pockets of the shaft hoist;

    c. third, potash ore is hoisted to the surface through the production shaft (extraction of potash ore is complete); and

    d. fourth, potash ore is processed, notably being crushed, ground, dried, compacted and crystallized ("production" of potash is complete).

[3] Copy of a diagram titled "What is potash and where does it come from?" **Tab 1** of the Joint Book of Documents.

12. Potash is a saleable product once it is in its crystallized form, at the end of the processing stage of the potash ore (*i.e.* at the end of the fourth step above).

13. The Appellant produced potash from mines in Saskatchewan for no purpose other than selling that potash.

Mineral Rights to Extract Potash Ore

14. The Appellant obtained the right to produce potash in Saskatchewan during the Relevant Period through a combination of the following:

    a. it acquired ownership of mineral rights;

    b. it acquired Crown leases from the Saskatchewan Crown pursuant to *The Crown Minerals Act*[4] and *The Subsurface Mineral Regulations*[5] and their predecessors. By such leases, the Saskatchewan Crown granted the Appellant the right to extract, recover or produce minerals (potash, in this case) found on, in or under the Saskatchewan Crown's lands;[6] and

    c. it obtained freehold leases from private persons (individuals/corporations), that owned the minerals below the surface of the lands in question. The leases granted to the Appellant the right to mine, extract, recover or produce minerals (potash, in this case).[7]

15. During the Relevant Period, the Appellant also obtained potash from ore reserves near Esterhazy, Saskatchewan (the "**PCS Reserves**"). This is so because:

    a. the Appellant held the mineral rights to the PCS Reserves;

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[4] SS 1984-85-86, c C-50.2 (the "Crown Minerals Act").
[5] 1960, SR 541/67 (the "Subsurface Mining Regs").
[6] For example, see Copy of Subsurface Mineral Lease issued by the Government of Saskatchewan to Potash Corporation of Saskatchewan Mining Limited, dated October 20, 1981. Tab 2 of the Joint Book of Documents.
[7] See for example: Copy of Freehold Mineral Lease between Minerals Ltd. (Lessor) and Alwinsal Potash Canada Limited (Lessee), dated March 1, 1965 at Tab 3 of the Joint Book of Documents and Copy of Lease Renewal Notice issued to Minerals Ltd. by PCS Mine (successor in title to Alwinsal Potash of Canada Limited, dated April 3, 1986 at Tab 4 of the Joint Book of Documents.

b. the PCS Reserves are Canadian Resource Property of the Appellant as that term – Canadian resource property – is defined in the Income Tax Act[8];

c. the PCS Reserves were interspersed with other potash ore reserves at the same site held by a third party, International Minerals & Chemical Corporation (Canada) Limited ("**IMC**");

d. IMC owned and operated a mining facility located at Esterhazy, Saskatchewan ("the **Esterhazy Mine**") at which it mined and processed potash;

e. upon the Appellant's purchase of the PCS Reserves, the Appellant and IMC entered into a mining and processing agreement (the "**Mining Agreement**");[9]

f. the Mining Agreement (second 3.01(c)) required the Appellant to take up certain quantities of processed potash from IMC at a set price of $1 per tonne plus actual costs per ton of finished product (section 4.01); and

g. under section 5.01 of the Mining Agreement, the Appellant was required to pay its proportionate share of capital expenditures incurred by IMC during each year provided that the capital expenditure did not relate to a capital expenditure described in Article VI of the Mining Agreement.

16. For the purposes of public reporting to its shareholders, the Appellant included, in its computation of its annual potash production capacity, the maximum annual production it was entitled to take under the Mining Agreement with IMC at Esterhazy.[10]

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[8] Section 66(15) of the Income Tax Act.

[9] Copy of Restated Mining and Processing Agreement between IMC and the Appellant (missing page 6), dated January 31, 1978; Copy of Memorandum of Agreement between IMC and the Appellant, dated December 21, 1990; Copy of Amending Agreement between IMC and the Appellant, dated August 27, 1998; and Copy of Assignment and Consent Agreement between IMC and the Appellant, dated August 31, 1998. **Tabs 5 to 8** of the Joint Book of Documents.

[10] Copy of Cover page and pages 7 and 8 of 1999 Annual Report of the Appellant, undated; Cover pages (2) and pages I-1, I-2, I-3, I-4, I-5, I-6, 1-15 and signature page of the Appellant Report on Form 10-K for the Appellant's year ended December 31, 2002, dated March 26, 2003. **Tabs 9 and 10** of the Joint Book of Documents.

Canadian Resource Property

17. The potash that the Appellant produced during the Relevant Period, including the potash obtained from the Mining Agreement, was from Canadian resource properties of the Appellant as that term – Canadian resource property – is defined in the Income Tax Act.[11]

BASE PAYMENT

18. Saskatchewan potash producers are subject to Saskatchewan mining taxes and royalties, one of these being the base payment provided for in the *Mineral Taxation Act, 1983* (Saskatchewan)[12] (the "**Base Payment**").

19. Pursuant to section 4 of the Third Schedule of the Mineral Taxation Act ("**Third Schedule**"), the taxes imposed by the Mineral Taxation Act consist of:

    a. the Base Payment, computed in accordance with section 5 of the Third Schedule; and

    b. a "profit tax" (the "**Profit Tax**"), computed in accordance with section 6 of the Third Schedule.

20. The Appellant was required to file Annual Base Payment and Profit Tax Returns with the Saskatchewan Crown to comply with the Mineral Taxation Act.

21. The Appellant filed the Annual Base Payment and Profit Tax Returns for the Taxation Years.[13]

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[11] Section 66(15) of the Income Tax Act.

[12] SS 1983-84, c M-17.1 ("**Mineral Taxation Act**").

[13] Copy of Annual Base Payment Return and Annual of Profits Tax Return for the year ending December 31, 1999 with handwritten notes; Copy of Annual Base Payment Return and Annual of Profits Tax Return for the year ending December 31, 2000 with handwritten notes; Copy of Annual Base Payment Return and Annual of Profits Tax Return for the year ending December 31, 2001 with handwritten notes; and Copy of Annual Base Payment Return and Annual of Profits Tax Return for the year ending December 31, 2002 with handwritten notes. **Tabs 16 to 19** of the Joint Book of Documents.

22. The Appellant was liable for the Base Payment on the potash received under the Mining Agreement with IMC at the Esterhazy Mine that it sold or otherwise disposed of.

23. The Base Payment with respect to the potash it received from the Esterhazy Mine under the Mining Agreement is identified in the Appellant's Annual Base Payment Returns.

TAX REPORTING AND REQUEST

24. The Appellant filed income tax returns and amended income tax returns for each of the Taxation Years.[14]

25. In computing and reporting its income for the Relevant Period, the Appellant added on Schedule 001 of its income tax returns, as non-deductible provincial Crown mineral taxes, the following amounts of Base Payment:

Taxation Year	Base Payment
1999	$14,643,226
2000	$16,454,834
2001	$14,673,344
2002	$13,655,538

26. The amounts of Base Payment described in paragraph 25 were paid or accrued in respect of the potash that the Appellant produced and sold or disposed of during the Relevant Period from mines in Saskatchewan, including the potash related to the PCS Reserves.[15]

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[14] Copy of extracts of the Amended Federal T2 Income Tax Return for the year ended December 31, 1999 dated December 16, 2014; Copy of extracts of the Amended Federal T2 Income Tax Return for the year ended December 31, 2000 dated December 16, 2014; Copy of extracts of the Amended Federal T2 Income Tax Return for the year ended December 31, 2001 dated March 31, 2015; and Copy of extracts of the Amended Federal T2 Income Tax Return for the year ended December 31, 2002 dated October 5, 2015. **Tabs 11 to 15** of the Joint Book of Documents.

[15] Copy of Summary of Tax Paid and Expense as Recorded (CAD) prepared by the Appellant (1999);
Copy of Summary of Tax Paid and Expense as Recorded (CAD) prepared by the Appellant (2000);
Copy of Summary of Tax Paid and Expense as Recorded (CAD) prepared by the Appellant (2001);
and Copy of Summary of Tax Paid and Expense as Recorded (CAD) prepared by the Appellant (2002). **Tabs 20 to 23** of the Joint Book of Documents.

27. By letters sent in 2005 (for the 1999 TY, 2000 TY and 2001 TY) and in 2006 (for the 2002 TY), the Appellant requested to take the deduction of, *inter alia*, the above amounts of Base Payment, subject to a reduction to its resource allowance.[16]

REASSESSMENTS UNDER APPEAL

28. Audit reports were issued for each of the Taxation Years.[17]

29. The Minister of National Revenue (the "**Minister**") issued notices of reassessment on July 16, 2015 for the 1999 TY and 2000 TY, and on May 17, 2016 for the 2001 TY whereby she did not allow the deduction of the Base Payment.

30. By notices dated October 13, 2015 (for the 1999 TY and 2000 TY) and August 10, 2016 (for the 2001 TY), the Appellant objected to the notices of reassessment.

31. The Minister issued notices of confirmation for the 1999, 2000, and 2001 taxation years respectively on November 1, 12 and 20, 2019.[18]

32. Pursuant to a decision on objection, the Minister issued a notice of reassessment in respect of the 2002 TY on November 29, 2019.[19]

33. In correspondence dated July 7, 2015, December 20, 2018 and November 1, 2019 (for the 1999 TY); November 12, 2019 (for the 2000 TY); and November 20, 2019 (for the 2001 TY and 2002 TY), the Minister

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[16] Copy of letters from PCS (Bill Flahr) to the Canada Revenue Agency ("**CRA**") (Erica Carlton) regarding PCS's 2000, 2001 and 2002 taxation years. **Tabs 24 to 26** of the Joint Book of Documents.

[17] Copy of "T20 Audit Report for the 1999 taxation year (6 pages) with information redacted that is unrelated to appeal issue" dated August 31, 2004; Copy of "T20 Audit Report for the 2000 taxation year (6 pages) with information redacted that is unrelated to appeal issue" dated May 26, 2005; Copy of "T20 Audit Report for the 2001 taxation year (6 pages) with information redacted that is unrelated to appeal issue" dated June 14, 2006; and Copy of "T20 Audit Report for the 2002 taxation year (6 pages) with information redacted that is unrelated to appeal issue" dated March 30, 2007. **Tabs 35 to 38** of the Joint Book of Documents.

[18] Copy of documents titled "Notices of Confirmation" issued by the CRA in respect of PCS's 1999, 2000 and 2001 TYs. **Tabs 31 to 33** of the Joint Book of Documents.

[19] Copy of a letter from the CRA (Michael McIntyre) to PCS (Caroline Engel) regarding the Notice of Objection dated November 1, 2018 for the 2002 TY. **Tab 34** of the Joint Book of Documents.

responded to the Appellant's notices of objection and explained her positon regarding the deductibility of the Base Payment.[20] The Minister summarized her position in the T401 Reports on Objection prepared for the Taxation Years.[21]

MISCELLANEOUS FACTS

34. The Appellant sold its potash to three customers: PCS Sales (Canada) Inc., PCS Sales (USA), Inc. and Canpotex Limited.

35. Canpotex Limited was an industry sales organization owned equally by the Appellant and two other Saskatchewan potash producers.

36. PCS Sales (Canada) Inc. was a direct wholly owned subsidiary of the Appellant. It was engaged in the sale and distribution of potash in Canada and offshore markets.

37. PCS Sales (USA), Inc. was an indirectly wholly owned subsidiary of the Appellant. It was engaged in the sales, marketing and distribution of potash in the United States and offshore markets.

38. PCS Sales (Canada) Inc. was not liable for the taxes under the Mineral Taxation Act, including the Base Payment, on the potash it sold. The Appellant was liable for the Base Payment computed on the final sale price of the potash paid to PCS Sales (Canada) Inc. by its third party customers.

39. PCS Sales (USA), Inc. was not liable for the taxes under Mineral Taxation Act, including the Base Payment, on the potash it sold. The Appellant was liable for the Base Payment computed on the final sale price of the potash paid to PCS Sales (USA), Inc. by its third party customers.

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[20] Copy of a letter from the CRA (Ken Insch) to PCS Re: Notice of Objection for the 1999 TY dated July 7, 2015 and Copy of a letter from the CRA (Ken Insch) to PCS (Annette Pilipiak) regarding the Notice of Objection for the 1999 TY dated December 20, 2018, respectively **Tabs 29 and 30** of the Joint Book of Documents. See also documents listed in notes 17 and 18 above found in **Tabs 31 to 34** of the Joint Book of Documents.

[21] T401 Reports on Objection for the Taxation Years. **Tabs 46 to 49** of the Joint Book of Documents.

40. In computing income for tax purposes under the Income Tax Act for each of the Taxation Years, the Appellant, in respect of its mining operations,

    a. computed adjusted resource profits per Part XII of the federal Income Tax Regulations ("**ITR**"); and

    b. deducted the resource allowance under paragraph 20(1)(v.1) of the *Income Tax Act*, in the following amounts:[22]

PROFIT TAX

Amount computed as per Potash	Adjusted resource profits per Part XII of the ITR	Resource allowance deducted under paragraph 20(1)(v.1) of the Act
1999 Taxation Year	$197,928,513	$49,482,128
2000 Taxation Year	$252,767,145	$63,191,786
2001 Taxation Year	$200,059,805	$50,014,951
2002 Taxation Year	$294,745,532	$73,686,383

41. In computing and reporting its income for the Relevant Period, the Appellant added on Schedule 001 of its income tax returns, as non-deductible provincial Crown mineral taxes, the following amounts of Profit Tax paid or accrued to the Saskatchewan Crown pursuant to the Third Schedule.[23]

Taxation Year	Profit Tax
1999	$72,092,574
2000	$65,438,620
2001	$59,379,166
2002	$61,574,892

[22] Copies of extracts of the Amended Federal T2 Income Tax Return for the Taxation Years. **Tabs 11 to 14** of the Joint Book of Documents.

[23] More precisely, the amounts were paid or accrued pursuant to sections 4 and 5 of the *Mineral Taxation Act*, section 6 of the Third Schedule, and Part IV of *The Potash Production Tax Regulations*, RRS c. M-17.1 Reg 6.

42. By letters sent in 2005 (for the 1999 TY, 2000 TY and 2001 TY) and in 2006 (for the 2002 TY), the Appellant requested to take the deduction of the amounts of Profit Tax listed in paragraph 41 above, subject to the impact on the resource allowance.[24]

43. The Minister denied the Appellant's request.

OTHER SASKATCHEWAN PROVINCIAL TAXES AND LEVIES[25]

Mineral Lease Rental

44. The CRA allowed the deduction of the following amounts of mineral lease rental paid or accrued by the Appellant to the Saskatchewan Crown pursuant to *The Crown Minerals Act*, ("**Mineral Lease Rental**"):[26]

Taxation Year	Mineral Lease Rental
1999	$586,982
2000	$507,866
2001	$569,264
2002	$694,010

Crown Royalties

45. In computing and reporting its income for the Taxation Years, the Appellant added on Schedule 001 of its income tax returns, as non-deductible provincial Crown Royalties, the following amounts paid or accrued to the Saskatchewan Crown pursuant to *the Crown Minerals Act* ("**Crown Royalties**"):[27]

Taxation Year	Crown Royalties
1999	$12,448,074
2000	$12,328,332

[24] See documents referred to at note 16.
[25] In her closing arguments, the Respondent will argue that the facts under this heading are not relevant to the issues in this appeal.
[26] Subsection 20 of *The Crown Minerals Act*, SS 1984-85-86, c C-50.2.
[27] Sections 14 and 15 of *the Crown Minerals Act*, supra note 23, and section 38 of *The Subsurface Mineral Regulations, 1960*, SR 541/67.

2001	$11,169,165
2002	$10,721,160

46. In computing and reporting its income for its taxation years 2007 to 2020, the Appellant claimed the deduction of the Crown Royalties paid or accrued to the Saskatchewan Crown.

47. The CRA did not deny the deduction of the Crown Royalties claimed by the Appellant for the taxation years 2007 to 2020.

Mineral Rights Tax

48. The CRA allowed the deduction of the following amounts of mineral rights tax (also called "acreage tax") paid or accrued by the Appellant to the Saskatchewan Crown pursuant to the Mineral Taxation Act ("**Mineral Rights Tax**"):[28]

Taxation Year	**Mineral Rights Tax**
1999	$161,496
2000	$240,391
2001	$236,943
2002	$251,197

Capital Tax

49. In computing and reporting its income for the Taxation Years, the Appellant claimed the deduction of the following amounts of corporation capital tax paid and accrued to Saskatchewan Crown pursuant to *The Corporation Capital Tax Act* ("**Capital Tax**"):[29]

Taxation Year	**Capital Tax**
1999	$4,568,492
2000	$8,245,064
2001	$8,756,188

[28] Part III of the Mineral Taxation Act.
[29] Subsection 3(1) of *The Corporation Capital Tax Act*, SS 1979-80, c C-38.1.

2002	$8,334,352

50. The CRA allowed the deduction of the amounts of Capital Tax described in paragraph 49.

Surtax

51. In computing and reporting its income for the Taxation Years, the Appellant added on Schedule 001 of its income tax returns, as non-deductible capital tax resource surtax, the following amounts paid or accrued to the Saskatchewan Crown pursuant to *The Corporation Capital Tax Act* ("**Surtax**"):[30]

Taxation Year	Surtax
1999	$22,843,839
2000	$19,938,440
2001	$18,177,057
2002	$18,145,356

52. In 2005 and 2006, the Appellant made requests to the CRA to deduct the amounts of Surtax described in paragraph 51 above, subject to the impact on the resource allowance.

53. The CRA allowed the deduction of the amounts of Surtax described in paragraph 51 above.

[30] Subsection 3(1.1) and 13.1 of *The Corporation Capital Tax Act*, supra note 29.

APPENDIX B

The Provisions of the *Mineral Taxation Act, 1983 (Saskatchewan)* (the "MTA"), *The Potash Production Tax Schedule* (the "PPTS") and[1] *The Potash Production Tax Regulations* (the "PPTR")

The MTA,[2]

PART I
Short Title and Interpretation

. . .

Interpretation

2(1) In this Act:

. . .

(d) "mineral" means any non-viable substance formed by the processes of nature, irrespective of chemical or physical state and both before and after production, but does not include any water, agricultural soil, sand or gravel or any other prescribed substance;

. . .

(e) "mineral production tax" means any tax imposed by this Act on the production or sale or other disposition of a scheduled mineral;

. . .

(g) "mineral rights tax" means any tax imposed by this Act on or in respect of a mineral right;

. . .

[1]The PPTS is part of the MTA but is referenced separately because it has its own section numbering.

[2] The following provisions reflect amendments made by *The Mineral Taxation Amendment Act, 1999*, which was assented to on May 6, 1999, as well as all prior amendments.

(i) "owner" means a person who is shown as an owner on a certificate of title that includes any mineral right or a person who is deemed to be an owner pursuant to section 8; **[to June 24, 2001]**

(i) "owner" means the registered owner of a mineral title, and includes a person who is deemed to be an owner pursuant to section 8; **[from June 25, 2001]**[3]

(j) "person" includes a corporation, company, syndicate, trust, firm, partnership, co-owner or party, and includes the successors, heirs, executors, administrators or other legal representatives of any such person;

(k) "prescribed" means prescribed in the regulations;

(l) "Schedule" means a schedule to this Act;

(m) "scheduled mineral" means any mineral in respect of which a Schedule to this Act is enacted;

(n) "taxpayer" means any person who is liable to pay any of the taxes imposed by this Act.

(2) Any word or expression used in this Act but not defined in this Act may be defined in the regulations.

(3) The use or consumption of a scheduled mineral by a person who is liable to pay the mineral production taxes imposed by this Act on the production or sale or other disposition[4] of that scheduled mineral is deemed to be a sale or other disposition of that scheduled mineral.

. . .

[3] The definition of "owner" was replaced by section 340 of the *Land Titles Act, 2000* (SS2000, c L-5.1) effective June 25, 2001

[4] Subsection 2(3) was added to the MTA and the words "or sale or other disposition" were added to clause 2(1)(e) and sections 4, 5 and 6 of the MTA by *The Mineral Taxation Amendment Act, 1989*, assented to on August 25, 1989.

PART II
Mineral Production Taxes

Mineral production taxes

4 A tax is hereby imposed on the production or sale or other disposition of each scheduled mineral produced in Saskatchewan.

Calculation and payment of taxes

5 The mineral production taxes imposed by this Act on the production or sale or other disposition of a scheduled mineral are to be levied, calculated and paid in the manner and at the times required by or under the Schedule enacted in respect of that scheduled mineral.

Matters to be provided for in Schedules

6 Without limiting the generality of section 5, the following matters in respect of the mineral production taxes imposed by this Act on the production or sale or other disposition of a scheduled mineral are to be provided for in the Schedule enacted in respect of that scheduled mineral:

(a) the determination of the persons or classes of persons who are to be liable to pay or remit such taxes;

(b) the basis of calculation of such taxes, including any allowances, credits or other deductions that may be made or taken in calculating or paying such taxes;

(c) the times at which such taxes are to be levied, calculated and paid;

(d) any requirements in respect of the administration or collection of such taxes to the extent not otherwise provided for in this Act; and

(e) the authority to make any regulations necessary or advisable in respect of the levying, calculation, payment or remittance of such taxes to the extent not otherwise provided for in this Act.

PART III
Mineral Rights Tax

. . .

Mineral rights tax

11 Except as otherwise provided in this Part, every owner of a mineral right is liable for and shall pay in each year a tax in the amount of $960 for each nominal section of the aggregate area of all mineral rights owned by him in the year, and a *pro rata* amount for any area of any mineral rights owned by him that is not a full nominal section.

. . .

PART IV
Administration and Enforcement
GENERAL

. . .

Investigations

25(1) When it is considered by the minister to be necessary for the purposes of this Act, the minister or any officer of the department authorized by the minister to do so may at any time enter upon any premises for the purposes of making enquiries and obtaining information relating to the administration of this Act, and for any of those purposes he may use all machinery, equipment, appliances and things as he considers necessary or expedient, and is entitled:

(a) to be given free ingress and egress to, from and over all buildings and structures used in connection with the operation of any facility from, at or in which any scheduled minerals are produced, sold or otherwise disposed of, treated, processed or refined in any way, or any building or office, whether or not occupied by a taxpayer, at which any books or records pertaining to the production, sale or other disposition, treatment, processing or refining of any scheduled minerals are kept;

. . .

THIRD SCHEDULE
Potash Production Tax
SHORT TITLE AND INTERPRETATION

Short title of Schedule

1 This Schedule may be cited as *The Potash Production Tax Schedule*.

Interpretation of Schedule

2 In this Schedule:

(a) "mine" means any opening in or excavation of the ground in Saskatchewan from which potash is or is capable of being produced;

(b) "month" means a calendar month;

(c) "potash" means a non-viable substance that:

(i) is formed by the processes of nature; and

(ii) contains the element potassium;

(d) "producer" means a person who has the right to produce and sell or otherwise dispose of potash from a mine, whether that person does so himself or herself or through any other person;

(e) "quarter" means a calendar quarter ending on March 31, June 30, September 30 or December 31 in each year;

(f) "tonne" means a metric tonne;

(g) "year" means a calendar year.

TAX

Application

3(1) The mineral production taxes imposed by this Act apply to all potash that:
(a) subject to subsection 5(13), is produced from any lands in Saskatchewan and;

(b) is sold or otherwise disposed of on or after January 1, 1990.

(2) Each producer is liable for the mineral production taxes imposed by this Act on the sale or other disposition of potash produced from the mine or mines with respect to which that person is a producer.

(3) Every producer shall calculate and pay the mineral production taxes imposed by this Act in the manner and at the times provided in this Schedule and the regulations:

(a) respecting potash sold or otherwise disposed of prior to January 1, 2002, on the basis of the total amount of potash sold or otherwise disposed of from each mine individually with respect to which that person is a producer; and

(b) respecting potash sold or otherwise disposed of on or after January 1, 2002, on the basis of the total amount of potash sold or otherwise disposed of from all of the mines collectively with respect to which that person is a producer.

Components of tax

4 The mineral production taxes imposed by this Act on the sale or other disposition of potash consist of:

(a) a base payment calculated in accordance with section 5; and

(b) a profit tax calculated in accordance with section 6.

Base payment

5(1) In this section:

(a) "P" means the amount in dollars equal to the prescribed percentage of the producer's profits for a year;

(b) "Q" means the quantity of potash, expressed in tonnes, that is sold or otherwise disposed of by the producer in a year;

(c) "R" means the rate of tax mentioned in subclause (2)(a)(i).

(2) The base payment for a year is the amount equal to the difference between:

(a) the product of:

(i) the rate of tax determined pursuant to subsection (3), (4) or (5); and

(ii) the quantity of potash sold or otherwise disposed of in that year, expressed in tonnes; and

(b) the total of any applicable deductions, allowances and credits that are:

(i) prescribed; or

(ii) provided for in this Schedule.

(3) Subject to subsections (4) and (5), for the purposes of calculating the base payment, the rate of tax is the rate, expressed in dollars per tonne of potash sold or otherwise disposed of, calculated in accordance with the following formula:

$$R = P/Q$$

(4) Where the rate of tax computed pursuant to subsection (3) is greater than the prescribed maximum rate of tax, the rate of tax to be used to calculate the base payment is the prescribed maximum rate of tax.

(5) Where the rate of tax computed pursuant to subsection (3) is less than the prescribed minimum rate of tax, the rate of tax to be used to calculate the base payment is the prescribed minimum rate of tax.

(6) Every producer that is liable to pay taxes pursuant to this Schedule shall pay to the minister an instalment of the base payment with respect to each month:

(a) not later than the last day of the month next following; and

(b) calculated in accordance with subsections (7) and (8).

(7) For the purposes of calculating the rate of tax that is applicable to a monthly instalment, the producer shall, in each month, estimate the values of P and Q.

. . .

(10) After the last day of each year, every producer shall determine the amount of the base payment for the year using the actual amount of profits and the actual quantity of potash sold or otherwise disposed of during that year.

(11) Unless the Act or the regulations provide otherwise, where the amount of the base payment determined pursuant to subsection (10) exceeds the total of the instalments paid pursuant to subsection (8), the producer shall pay to the minister the difference between those amounts within 90 days after the last day of the year.

(12) Where the total of the instalments paid pursuant to subsection (8) exceeds the amount of the base payment determined pursuant to subsection (10), the minister shall refund to the producer the difference between those amounts within 30 days after receipt of the producer's final return for the year.

(13) The base payment applies only to potash that is produced on or after January 1, 1990.

Profit tax

6(1) The profit tax for a year is the amount equal to the difference between:

(a) the total of the products of:

(i) profits for that year, determined in accordance with the regulations, within each profit bracket that is:

(A) prescribed pursuant to clause 11(c); and

(B) expressed in dollars per tonne of potash sold or otherwise disposed of; and

(ii) the rate of tax that is prescribed for each profit bracket; and

(b) the total of any applicable deductions, allowances and credits that are:

(i) prescribed; or

(ii) provided for in this Schedule.

(2) Unless the Act or the regulations provide otherwise, on or before the last day of each quarter in any year, every producer shall:

(a) estimate the producer's profits for that year; and

(b) pay to the minister an instalment of the profit tax with respect to that quarter, calculated in accordance with subsection (3).

. . .

(5) After the last day of each year, every producer shall determine the amount of the profit tax payable for that year, based on the actual amount of profits for that year.

. . .

The Potash Production Tax Regulations
CHAPTER M-17.1 REG 6
The Mineral Taxation Act, 1983
PART I
Title and Interpretation

. . .

Interpretation

2(1) In these regulations:

. . .

(x) "disposition" means, with respect to an asset:

(i) any transaction or event with respect to an asset that entitles a producer to proceeds of disposition;

(ii) any transfer of an asset by way of gift; or

(iii) the removal, other than a temporary removal, of an asset from a mine for any reason;

but does not include:

(iv) any transfer of an asset for the purpose only of securing a debt or loan;

(v) any transfer of an asset used as security for a debt or loan for the purpose only of returning the asset by the creditor; or

(vi) any transfer of an asset that results in a change of the legal ownership of the asset but not a change in the beneficial ownership of the asset;

. . .

(mm) "proceeds of disposition" means:

(i) the sale price or any other consideration received or receivable by a producer for the disposition of an asset, and includes:

(A) the assumption, undertaking, extinguishment or release of any liability:

(I) of the producer; or

(II) that affects the asset disposed of; and

(B) the value of any benefit of any kind conferred on the producer or on any other person at the direction of the producer as part of the arrangement relating to the disposition of the asset;

(ii) subject to section 28, any:

(A) compensation that is received by a producer; or

(B) amount that is paid to a producer pursuant to a policy of insurance;

with respect to an asset that is lost, destroyed or unlawfully taken;

(iii) subject to section 28, any:

(A) compensation that is received by a producer; or

(B) amount that is paid to a producer pursuant to a policy of insurance;

with respect to an asset that is damaged, except to the extent that the compensation or amount is applied to reduce operating costs pursuant to subclause 7(2)(a)(ii);

(iv) subject to section 28, compensation for an asset taken pursuant to statutory authority or the sale price of an asset sold to a person who has given notice of intention to take the asset pursuant to statutory authority;

(v) subject to section 28, compensation for an asset injuriously affected, whether lawfully or unlawfully or whether pursuant to statutory authority or otherwise; and

(vi) an amount equal to the fair market value of an asset disposed of, where the disposition is made:

(A) by a producer to a person with whom the producer is not dealing with at arm's length at the time of the disposition;

(B) to a corporation in consideration of the allotment and issue of its shares;

(C) to a corporation without share capital, organization, syndicate, association, partnership or joint venture in consideration of the admission to membership in it of any person;

(D) by way of gift; or

(E) by way of removal, other than a temporary removal, of the asset from a mine;

(nn) "production" means the quantity of potash produced from a mine and includes potash produced from both Crown mineral lands and freehold mineral lands;

. . .

(yy) "treated" means concentrated, refined or otherwise processed:

(i) in Saskatchewan; or

(ii) with the prior written approval of the minister, outside Saskatchewan; [**Version as of April 20, 1999**]

(yy) "treated" means concentrated, refined or otherwise processed at a mine or at a location that, in the opinion of the minister, is reasonably near to a mine; [**Version prior to April 20, 1999**]

. . .

(2) For the purposes of the Act and in these regulations, "produced" means extracted from the ground and includes:

(a) treated as defined in clause (1)(yy); and

(b) stored and shipped:

(i) in Saskatchewan; or

(ii) with the prior written approval of the minister, outside Saskatchewan. [**Version as of April 20, 1999**]

(b) stored and shipped if, in the opinion of the minister, storage and shipment takes place at or near a mine. [**Version prior to April 20, 1999**]

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APPEARANCES:

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