

losses are deductible. Canada first imposed its capital gains tax in 1972. As a result, only appreciation after 1972 is taxed.

Whether an individual is considered resident in Canada for income tax purposes is a question of fact and is difficult to define with precision. The law emphasizes that the issue is to be determined upon the circumstances of each case.

Generally, moving to Canada and establishing permanent residence there would result in resident status for tax purposes.

Further, the Canadian Income Tax Act deems an individual resident in Canada throughout a taxation year if he sojourned in Canada in the year for 183 days or more.

Presence in Canada for less than 183 days in a year, however, does not establish nonresidence.

A corporation is considered resident in Canada for federal income tax purposes if its "central control and management" is in Canada.

Certain corporations, including those incorporated in Canada after April 26, 1965, are deemed to be resident in Canada.

In general, corporations are subject to tax at a combined federal and provincial rate of approximately 50 percent. Where a corporation carries on certain manufacturing and processing activities the combined tax rate is approximately 40 percent.

Subject to certain limitations, the first Cdn\$200,000 of active business income earned by a Canadian controlled private corporation is taxed at a special low rate of 25 percent. Where the corporation also carries on certain manufacturing and processing activities, the tax rate is reduced to 20 percent. Special provincial incentives may also apply.

Generally, a Canadian resident corporation pays tax on investment income at a rate of approximately 50 percent.

While a nonresident corporation is usually taxed only on Canadian source income, a Canadian resident shareholder may be taxed on undistributed offshore income earned by a nonresident corporation.

Generally, when a taxpayer becomes a resident of Canada, he is deemed to have acquired each property owned by him at a cost equal to its fair market value at that particular time (such property receives a "fresh-start" basis). As a result, a Canadian resident selling capital property is exempted from tax on appreciation which took place prior to residence being taken up in Canada. The corollary of this provision is that, subject to certain exceptions, when a resident of Canada gives up Canadian residence he is deemed to have disposed of all his property and must pay a "departure tax" on the appreciation of property during residence.

### Non-residents

Generally, non-residents of Canada are subject to Canadian tax on taxable income earned in Canada. For a non-resident, tax-

able income earned in Canada is generally calculated as if the non-resident had no income other than income arising through employment in Canada, the carrying on of a business in Canada, or from the disposition of taxable Canadian property.

Non-residents of Canada are subject to capital gains tax only upon the disposition of "taxable Canadian property." Taxable Canadian property includes real property interests situated in Canada, certain shares

in Canadian corporations, and capital property used by a nonresident in carrying on a business in Canada. ■

*Philip Marcovici, LL.B (University of Ottawa), LL.M (Harvard Law School) and Norris H.C. Yang, LL.B (University of Windsor) are lawyers with an international law firm which has offices in Hong Kong and Toronto.*

## COVER STORY

# Investment Incentives to Help Small Businesses

Canadian and foreign firms are generally treated alike, and the same criteria used, when it comes to qualifying for federal and provincial investment incentives.

The incentives, which include cash grants and loan guarantees, are designed to attract manufacturing companies to areas of slow economic growth, increase employment, promote exports, substitute Canadian products for imports, conduct research and development and update plant and equipment.

At present the federal Government is reorganising the economics departments that play a major role in providing incentives.

The recently created Department of Regional Industrial Expansion (DRIE) will replace the departments of Regional Economic Expansion (DREE) and Industry, Trade, Commerce (ITC).

The new DRIE will administer the industrial and regional development program (IRDP) which was enacted by Parliament in the summer of 1983. IRDP combines a number of investment incentive programs that were administered by DREE and ITC, such as the enterprise development program and the regional development incentives program which offered loans and grants in designated slow-growth areas.

A key feature of the new program is that financial incentives to business will now be available in all areas of the country and will not be restricted to designated areas as some previous assistance programs were.

However, in recognition of the fact that certain areas are more in need of economic development than others (see charts) added incentives will be provided to companies in economically disadvantaged areas. IRDP will utilize grants, loans and loan guarantees to provide financial

assistance to business.

Each of the provinces offers a variety of incentives, including capital loans at concessional rates, grants, market surveys and job training funds.

The Quebec Industrial Development Corporation has a particularly generous package.

### Special Measures

Although financial institutions in the private sector constitute the largest source of funds for business, situations exist where it is relatively difficult for medium-sized industries in Canada to obtain their requirements from such sources.

This is particularly true of projects of an industrial development nature requiring long-term financing. In some instances, industrial development or business expansion proposals require financial assistance of a type not readily available through the usual commercial channels.

The existence of these special financial needs has prompted the introduction of two separate measures at federal level. These are incorporated in the Small Business Loans Act and the Federal Business Development Bank Act.

The SBLA provides a Federal Government guarantee on intermediate loans made to new and existing small business enterprises by chartered banks and other lenders designed by the Minister of the Department of Industry, Trade and Commerce.

A small business enterprise is defined as one whose estimated gross annual revenues do not exceed C\$1.5 million for the fiscal years for which the application is made. In the case of a new business, estimated gross revenue for the first fiscal year of business should not exceed \$1.5 million.

The loan amount a small business may have outstanding at any one time may not