

*Income Tax Act*

He referred to the requirement that 95 per cent of the assets owned by the taxpayer must be in the designated area, and must be new if the business is to qualify as a new business. The hon. member seemed to suggest that the word "own" or "ownership" should be defined. I am not at all sure that that word can be defined for this particular purpose. I suggest to him that there are well established tests and rules concerning ownership and that it is not necessary to define this concept for other parts of the income tax law. Capital cost allowances are granted to owners of depreciable assets and the Department of National Revenue has not experienced difficulty in determining who is the owner of property for this purpose. The same rules would apply in connection with this section.

I should like to mention one other point which was raised by the hon. member for Edmonton West. He posed the question whether the coming into force of this bill would terminate article 11 of the Canada-United States tax convention. There can be, no doubt that the increased rate of 20 per cent is not imposed until it is actually withheld from dividends. Article 11 of the Canada-U.S. tax agreement is specific in saying that tax must be imposed. It was desired to give advance notice of this change in the tax rate and the effective way to do this is to pass the necessary legislation now but to provide for it to go into effect at some future date. The date provided is January 1, 1965. Not only does this arrangement give companies time to rearrange their affairs if they wish to do so, but it also provides time for negotiations to be entered into with the United States with a view to the revision of the Canada-United States income tax convention to take account of Canada's new tax policies and the special circumstances which have made these changes desirable. Preliminary steps have been taken in connection with these negotiations, but obviously they cannot proceed very far until the tax changes proposed by Canada have been enacted into law.

I think I said that was the final point raised by the hon. member for Edmonton West with which I wanted to deal. However, I should like to say a brief word about the remarks he made in connection with the right of appeal from ministerial rulings relating to dividend stripping. With respect, I disagree with the hon. member's interpretation of the effect of this section. The bill gives the tax appeal board or the exchequer court a specific right to vacate the direction of a minister if the board or the court on consideration of the relevant facts reaches a

conclusion which is different from the conclusion of the minister. In arriving at this conclusion, the relevant facts may be reviewed and findings made thereon.

I do not like being in the position of proposing new discretionary power for my colleague the Minister of National Revenue, but we are confronted with this situation: there is a wide open loophole in the tax law as it stands at present. The royal commission on taxation has not yet reached a conclusion as to how it might best be dealt with. I had lunch with the chairman day before yesterday. So we face this position: We can leave things as they are until the royal commission has considered the subject and reported, or we can close the loophole now and stop this milking of the treasury though not in the way we would, perhaps, prefer to do it—an effective way, notwithstanding, and a way we would hope to change as soon as the report of the royal commission has been received, provided a satisfactory alternative is recommended. It seems to me we are confronted with two evils, but that one of the evils is a lot worse than the other.

I should be glad to deal with the various other questions which have been raised by members of this committee as we come to the appropriate clauses in the bill.

**Mr. Woolliams:** Before the minister proceeds, may I say I think the hon. gentleman will agree with my contention that, once ministerial discretion has been exercised judiciously, it is very difficult to get that decision upset on appeal. Once the minister or, in fact, the department, has exercised its discretion it is very hard to upset the ruling, provided the discretion has been exercised on the proper facts and exercised judiciously.

**Mr. Gordon:** If it has been exercised judiciously on the basis of the proper facts I would have to agree with the hon. member that it would, indeed, be difficult to get the decision reversed. But what is the alternative? Should we leave this door wide open until we have a report from the royal commission, or should we do something now to close the loophole? That seems to be the dilemma we encounter.

I was about to say that if members of this committee would not think it unusual or improper I should like to venture an observation or two about clause 1 of this bill. This particular clause—and I suggest hon. members might like to read it, or look at it—is designed to plug a loophole. The amendment is to section 5(1)(a) of the act which requires that income from employment including value of board, lodging and other benefits received by virtue of the employment must be included in an employee's income. An exception is