

# HOUSE OF COMMONS

Thursday, December 13, 1984

The House met at 11 a.m.

● (1105)

## GOVERNMENT ORDERS

[Translation]

### INCOME TAX CONVENTIONS INTERPRETATION ACT

#### MEASURE TO ENACT

**Hon. Ray Hnatyshyn (for Mrs. McDougall)** moved that Bill C-10, an Act respecting the interpretation of Canada's international conventions relating to Income Tax and the Acts implementing such conventions, be read the second time and referred to a Committee of the Whole.

**Mr. Claude Lanthier (Parliamentary Secretary to Minister of Finance):** Mr. Speaker, the purpose of Bill C-10 is to enshrine in the Statutes a number of rules for interpreting Canada's conventions relating to income tax. The general rules relating to the interpretation of treaties are laid down in the Vienna Convention on treaty law. However, this Convention is concerned with treaties in general and does not deal with the problems peculiar to conventions dealing with double taxation. Most conventions entered into recently by Canada and other members of the Organization for Economic Co-operation and Development are patterned after the OECD model convention of 1977 concerning double taxation. This convention is accompanied by an appendix entitled "Commentary" which also simplifies the interpretation of later conventions. However, it has now become necessary to provide for other rules as a result of the recent decision by the Supreme Court of Canada in *Melford Development Inc. vs. the Queen*.

In the Melford decision, the Supreme Court ruled that any terms and expressions in Canada's tax conventions that are not defined should be interpreted in accordance with the legislation existing at the time the convention was ratified and not according to the meaning they had at the time the taxable activity took place. In the case of older treaties, according to the interpretation given by the Supreme Court in the Melford case, taxpayers would have to know what certain terms meant at a given time, for instance in 1942, when the former tax convention between Canada and the United States was ratified. Furthermore, the same terms or expressions, but used in different conventions could, according to this interpretation, have a different meaning, depending on the date on which the tax convention in question was ratified.

The Supreme Court's interpretation was also contrary to the interpretation previously applied by Revenue Canada officials, who in the past had understood that, unless otherwise provided in the convention, the meaning of the terms used in our treaties would evolve with the changes being made in Canadian tax legislation.

This Bill is aimed primarily at ensuring, for the purposes of determining Canadian income tax, that the meaning of those terms and expressions in Canada's tax conventions that are not defined will evolve in terms of the changes made in Canada's tax legislation.

● (1110)

The Bill before the House today does not affect the interpretation of any terms that are already defined in a convention. It applies only when terms or expressions in a convention are not well defined or when the convention itself provides that the meaning of a term shall be determined, at least partly, according to the country's legislation.

Neither the OECD model convention nor the attached "Commentary" deal specifically with the issue raised in the Melford decision, that is, when the meaning of a term or expression is determined. The proposed legislation, however, does deal with this particular matter. It provides that, for the purposes of Canadian legislation, the terms used in a convention are to be interpreted according to the meaning they have in the Income Tax Act, as amended from time to time. For instance, if the matter concerns the income tax applicable to payment by a Canadian company, to a resident of a contracting country, of an amount that for the purposes of the Canadian tax system is considered to be a dividend, and if in the treaty the term "dividend" is to be interpreted as defined in Canada's tax legislation, the term "dividend" would, unless otherwise provided, be defined in accordance with the Income Tax Act at the time payment was made. The meaning of this term would then correspond to the meaning it would have under the legislation's provisions concerning dividends, as amended at that time.

The Bill provides that this interpretation rule shall not apply if other arrangements have been made, which would be the case, in the previous example, if the appropriate authorities of both countries had agreed on a specific definition of the term "dividend", as part of the mutual agreement procedure provided under most tax treaties. Nor will this rule apply if the