

always presented a problem. There have been court decisions which appeared to make it possible for the taxpayer to re-write contracts covering royalties so as to divide the payments into, first, part for the use of property, and the other part for information or know-how concerning the use of the property. In part the amendments clarify this but also enlarge the use of the property provisions. The language in the new section, to be found in the new paragraph (d) on page 53 of the old bill is any payment,

—for the use of or the right to use in Canada.

Then it goes on with the present language, but adds the words:

patent, trade mark, design or model, plan, secret formula, process or other thing whatsoever.

You have these additions which will attract withholding tax. You also have this, that any payment,

(ii) for information concerning industrial, commercial or scientific experience when the amount of any payment for such information is calculated directly, indirectly or in any manner whatsoever by reference to:

(A) the use to be made thereof or the benefit to be derived therefrom

(B) production or sales of goods or services by the person resident in Canada, or

(C) profits of the person resident in Canada,

(iii) for service of an industrial, commercial or scientific character performed by a non-resident person when the remuneration is calculated as in (ii)

As I have above described.

—but not including a payment made as remuneration for the sale of property or the negotiation of a contract...

In all those cases you have extended the application of your 15 per cent to know-how, for instance, which is quite a substantial item respecting payments to be made. Know-how, which is tied into production or tied into sales to measure the quantum that is to be paid for know-how is subject to this withholding. There are other features which I think simply require reading to understand them, and there are some exceptions which are perfectly clear.

Hon. Mr. Connolly (Ottawa West): How do you measure the know-how?

Hon. Mr. Hayden: Usually there is an agreement under which a parent company might agree to supply the know-how in connection with the carrying on of certain manufacturing operations in Canada and the payment will be calculated on this basis, a certain percentage of the profits. It will be based on production and you will have a sliding scale of rates to apply. If the payment for know-how is tied into any of those elements which I read, then it is subject to withholding tax. It is put in the same category as rents and royalties and things of that kind.

Hon. Mr. Connolly (Ottawa West): Thank you.

Hon. Mr. Hayden: There may not be many interested in this, but there is a special provision in clause 4, pages 4, 5 and 6 of the old bill and pages 5, 6 and 7 of the new, which amends section 20, subsection 12(a) to clarify rules as to recapture of capital cost allowance in the case of proceeds of disposition of a vessel and permits the Minister of Industry, Trade and Commerce to refund certain deposits made in connection with special capital cost allowances for vessels.

The Canadian Vessel Construction Assistance Act was repealed in 1967. This was where the subsidy arrangement emanated from so as to assist in the construction of what you might call the merchant fleet of Canada. Some of the provisions of that old act were transferred to the Income Tax Act and others to the Minister of Industry. That act permitted freedom from recapture of capital cost allowances where proceeds of disposition of a vessel were used for a satisfactory replacement. This benefit is continued in the Income Tax Act until the end of 1973.

The changes that have been made in this bill are these: the proceeds of disposition are to be used for replacement or conversion during the taxation year in which the vessel is disposed of. That is, they must be used during that year. If they are not used, the taxpayer puts up a deposit equal to the tax on the amount that would otherwise be recaptured. At the present time the taxpayer may use proceeds at any time up to 1974, and if not used in the year of disposition the taxpayer is assessed as if recapture applies, and later when the proceeds are used for replacement the taxpayer is reassessed and gets a refund.