

share was listed on a prescribed stock exchange, the share would be deemed to have been issued after November 16, 1978 other than pursuant to an established agreement. Thus, shares issued prior to November 17, 1978 which were retractable (i.e., redeemable at any time at the option of the holder) would be considered to be term preferred shares. This is legislation of a retroactive nature which adversely affects the taxpayer and is the kind of legislation which the Committee has consistently opposed.

(9) The effect of subparagraph (h)(iv) is to deem a share issued before November 17, 1978 or pursuant to an established agreement to have been issued after November 16, 1978 other than pursuant to an established agreement if after October 23, 1979 the share is acquired from a non-financial institution by a financial institution. In other words, financial institutions would be prevented from acquiring certain shares from non-financial institutions (unless they are prepared to accept the undesirable tax consequences). This provision would adversely and retroactively affect certain transactions which took place prior to October 23, 1979.

It is evident that much in the way of remedial amendment is necessary to cure the defects noted above. Bill C-17 has been passed by the House of Commons and the Minister has requested that it be passed by the Senate prior to the delivering of his budget on December 11, 1979. There is clearly insufficient time to amend the Bill in time for passage prior to December 11, 1979.

As a result, the Minister has come before the Committee and has given the following statements:

1. Amendments will be introduced with the Bill giving effect to the December 11, 1979 budget to ensure that the provisions of C-37, as drafted, will apply for the period between November 16, 1978 and October 23, 1979 and the provisions of Bill C-17 will apply after October 23, 1979. The net effect will be to remove any element of retroactivity in the application of the proposed amending provisions of Bill C-17.

2. Subparagraph 7(a)(iii) of Clause 66 defining a "term preferred share" will be amended to clarify what kinds of covenants will be acceptable.

3. Subparagraph (h)(iv) will be amended so as to make it clear that those shares that have been owned by financial institutions and are sold to non-financial institutions will not cease to be grandfathered when they are sold back to financial institutions, other than in the case of a sale by a financial institution after October 23, 1979 with a commitment to repurchase. Shares sold before October 23, 1979 or shares reacquired other than pursuant to a buy back arrangement will still be subject to the grandfathering protection.

4. The definition of term preferred shares will be amended to exclude common shares from its application.

5. Subsection 112(2.2), as proposed by Clause 36, will be amended to exclude from its application shares issued by financial institutions or their subsidiaries.

6. Consideration will be given to excluding shares listed on prescribed stock exchanges from the definition of term preferred shares. This would be done by regulation pursuant to paragraph (f).

7. The Committee has been informed that the 5% redemption feature in subparagraph 7(a)(ii) is being interpreted by Revenue Canada to apply in a cumulative manner and that they will administer the Act accordingly. The Committee has also been informed that Revenue Canada will administer paragraph (g) and subparagraph (h)(i) of subclause 66(7) to apply only to those kinds of changes contemplated by subparagraphs (h)(ii) to (h)(iv) inclusive. Should it become apparent to your Committee that Revenue Canada is not administering these provisions in the manner indicated, they will introduce amendments accordingly and with retroactive effect.

8. A review will be made of the grandfathering measures contained in subparagraph (h)(ii) to determine whether changes to this provision would be justified.

9. Similar amendments will be introduced to the definition of income bonds, where applicable.

Recognizing that the Committee has not had the opportunity of reviewing and commenting on any of the proposed amendments, the Minister has given the following additional undertaking:

10. Should it be apparent that the legislation to be introduced with the December 11, 1979 budget, giving effect to the foregoing undertakings, is incomplete or should subsequent interpretation thereof by the Department of National Revenue, Tax Review Board or the courts not be in accordance with the intent as expressed by these undertakings, further amendments will be introduced with subsequent bills to amend the *Income Tax Act*.

PART TWO

Small Business Deduction

The former Minister of Finance indicated when tabling his Bill C-37 that the small business deduction was an incentive granted for the expansion of small businesses which were carrying on an "active business". The small business deduction was meant to apply only to those businesses meeting this objective and amendments were necessary to prevent further abuses. More particularly, some professionals, artists and athletes were arranging their affairs solely to take advantage of the lower rate of tax. Others were diverting their investment income through corporations to obtain a similar benefit.

Under the proposals introduced by Bill C-37 in the November 1978 budget the benefits of the special corporate tax rate for small businesses would have been denied to three categories of business income: professional income, the income from certain personal services and income from the provision of certain management and other administrative services.