Understanding Provisions

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Understanding Provisions of the *Income Tax Act*

When first attempting to understand a provision of the ITA, a good place to start is a secondary source such as a textbook. This will give you an idea of what the provision is attempting to do, which will put the sometimes long string of words into context. This said, it is the words of the ITA that will have to form the foundation of your understanding and not the interpretation of a (respected) secondary source.

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When reading the provision of the ITA, I find it useful to break up a provision into 'single-issue' portions. For example, let us look at subsection 18(2.3):

> **18(2.3)** Notwithstanding subsection 18(2.2), if all of the corporations that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section, they allocate an amount to one or more of them for the taxation year and the amount so allocated or the total of the amounts so allocated, as the case may be, does not exceed $1,000,000, the base level deduction for the year for each of the corporations is the base level deduction that would be computed under subsection 18(2.2) in respect of the corporation if the reference in that subsection to $1,000,000 were read as a reference to the amount so allocated to it.

In breaking up the preceding subsection into single-issue portions, the result would be:

i.   Notwithstanding subsection 18(2.2)

ii.   IF all of the corporations that are associated with each other

iii.   in a taxation year

iv.   have filed with the Minister in prescribed form an agreement whereby

    v.   for purposes of this section

    vi.   they allocate an amount to one or more of them

    vii.   for the taxation year

    viii.   AND the amounts so allocated OR the total of the amounts so allocated, as the case may be,

    ix.   does NOT exceed $1,000,000

    x.   [THEN] the base level deduction for the year

    xi.   for each of the corporations

    xii.   is the base level deduction that would be computed under subsection 18(2.2) in respect to the corporation

    xiii.   IF the reference in that subsection to $1,000,000 were read as a reference to the amount so allocated to it.

Notice that I have used CAPS to indicate words that indicate conditions, limitations, conjunctions, disjunctions, and results - IF; AND; OR; NOT - and have added words in CAPS and [] when needed - [THEN]. Also notice that each part of the 13 portions is one question that may or may not affect the application of the rule and could be formed into self-monitoring questions. For example:

    i.   Would subsection 18(2.2) normally apply, so that this subsection could be an exception to it?

    ii.   Are there associated corporations?

    iii.   What taxation years are the corporations associated with each other?

    iv.   Have the corporations filed an agreement with the Minister in the prescribed form?

    […..]

This way, you are always aware of relevant circumstances that may affect the application of the rule to your particular circumstances.

Be conscious of the need to refer to any definitions that apply to the words and phrases used in a provision you are attempting to understand. Consider if there is some ambiguity created by the words themselves or the structure of the provision. If there is some ambiguity look to the other-language version of the ITA provision and see if the English/French version clears up the ambiguity (Both versions are equally authoritative - Subsection 18(1) *Canadian Charter of Rights and Freedoms*). Alternatively, each version on its own may be clear, but when compared to the other language version, it may lead to ambiguity.

It may be best to use an example (invent a scenario with numbers) and diagrams to understand the effect of the provision.

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