



Cancellation or Waiver of Penalties and/or Interest

Note: This memorandum of Chapter 16 supersedes GST Memorandum 500-3-2-1, *Cancellation or Waiver of Penalties and Interest*, dated March 14, 1994.

This memorandum sets out the administrative guidelines that the Canada Revenue Agency (CRA) will follow in applying the provisions of section 281.1 of the *Excise Tax Act* (the Act) where the Minister may cancel or waive penalties and/or interest payable under section 280 and the penalty payable under section 280.1 for filing a return late.

Disclaimer The information in this memorandum does not replace the law found in the *Excise Tax Act* and its regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate regulation, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call 1-800-959-8287.

If you are located in Quebec, please contact Revenu Québec by calling 1-800-567-4692 or visit their Web site at www.revenu.gouv.qc.ca.

Note – HST Reference in this publication is made to supplies taxable at 5% (the rate of the goods and services tax or GST) or 13% (the rate of the harmonized sales tax or HST). The HST applies to supplies made in Nova Scotia, New Brunswick, and Newfoundland and Labrador (the “participating provinces”). If you are uncertain as to whether a supply is made in a participating province, you may refer to GST/HST Technical Information Bulletin B-078, *Place of Supply Rules Under the HST*.

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Overview

Penalty and interest
s 280

1. Section 280 imposes penalty and/or interest charges in situations where a person has failed to pay or remit an amount to the Receiver General as required under Part IX of the Act. On late or deficient payments due before April 1, 2007, interest is charged at the rate prescribed under the *Interest Rates (Excise Tax Act) Regulations* for that time period, and penalties are charged at a rate of 6% per year.

New prescribed interest
and elimination of 6%
penalty
s 280

2. Effective April 1, 2007, the penalty under section 280 was eliminated. Section 280 now imposes a new prescribed interest rate on late or deficient payments due on or after April 1, 2007. The *Interest Rates (Excise Tax Act) Regulations* have been amended so that the new prescribed interest rate charged on an overdue amount is the basic rate, plus 4%. The term “basic rate” is defined in the amended *Interest Rates (Excise Tax Act) Regulations* as the average rate charged on 90-day Treasury Bills rounded up to the nearest whole percentage (expressed as a percentage per year).

Compound interest
s 124

3. Pursuant to section 124, both penalty and interest imposed under Part IX are compounded daily.

Failure to file a return
s 280.1

4. Section 280.1 imposes a failure-to-file penalty on GST/HST returns that are filed late. This penalty is calculated using the following two-part formula:

- Part (a) is calculated as 1% of the amount of net tax owing; and
- Part (b) is 25% of the amount in (a) for each complete month overdue, to a maximum of 12 months.

5. The failure-to-file penalty applies to

- any GST/HST return that is required to be filed on or after April 1, 2007, and
- any return that is required to be filed before that day, but is not, in which case the return is considered to be filed on March 31, 2007, for purposes of calculating the penalty.

This means that, for returns that are required to be filed on or before March 31, 2007, which are filed after March 31, part (b) of the penalty is calculated from April 1, 2007.

Administrative guidelines

6. This memorandum sets out the administrative guidelines under which the cancellation or waiver of penalties and/or interest, payable under section 280 and penalties assessed under section 280.1, may be considered. These guidelines may be adjusted in the future if the CRA considers it necessary.

Additional information

7. For information on the statutory penalties and the application of interest in accordance with the GST/HST provisions of the Act, see GST/HST Memorandum 16.2, *Penalties and Interest*.

Cancellation or waiver of penalties and/or interest

Circumstances beyond a person's control

8. The CRA recognizes that, despite a person's best efforts, there may be occasions where, as a result of extraordinary circumstances beyond the person's control, the person may be prevented from complying with the requirements of the Act, and therefore may incur penalties and/or interest imposed under section 280 or section 280.1. In such situations, the CRA may consider it appropriate to exercise discretion in the application of penalties and/or interest.

Meaning of "cancel" and "waive"

9. The terms "cancel" and "waive" have two distinct meanings. A penalty or interest that has already been charged may be cancelled. When a penalty or interest has not yet been charged, and at a person's request or on the CRA's own initiative, it is determined that the amount will not be charged, the penalty or interest is waived.

10-year rolling window for taxpayer relief requests

Cancelling or waiving interest
s 281.1

10. Effective April 1, 2007, consistent with the provisions respecting taxpayer relief requests under the *Income Tax Act*, a 10-year rolling window is set for these requests under the Act. The Minister may cancel or waive interest, the 6% penalty imposed under section 280 for a reporting period, and the failure-to-file penalty under section 280.1 in respect of a GST/HST return for a reporting period, within 10 calendar years after the end of the reporting period of the person, or on an application filed by the person on or before the end of that 10-year period.

Extraordinary circumstances

11. Penalties and/or interest may be cancelled or waived where they have resulted from an extraordinary circumstance beyond a person's control, which prevented the person from complying with the Act. For example, one of the following extraordinary circumstances may have prevented a person from making a payment when due, or otherwise complying with the Act:

- natural or human-made disasters such as flood or fire;
- civil disturbances or disruptions in services such as a postal strike;
- a serious illness or accident; or
- serious emotional or mental distress such as that caused by a death in the immediate family.

Cancellation or waiver due to actions by the CRA

12. The cancellation or waiver of penalties and/or interest may also be appropriate in some circumstances if the penalties and/or interest were incurred primarily because of the actions of the CRA. For example:

- processing delays that resulted in the person not being informed within a reasonable amount of time that an amount was owing;
- errors in CRA publications, which led the person to file returns or make payments based on incorrect information;
- incorrect written information provided in an interpretation or notice given to a specific person by the CRA;
- errors made by the CRA in the processing of GST/HST returns or information; or
- delays in providing information necessary for the person to comply with the Act.

Inability to pay or financial hardship

13. It may be appropriate for the CRA, in circumstances where there is an inability on the part of the person to pay amounts owing, to consider cancelling or waiving penalties and/or interest in whole or in part to facilitate collection. For example:

- when collection has been suspended due to an inability to pay, or
- when a person is unable to conclude a reasonable payment arrangement because the penalty and interest charges represent a significant portion of the payments. In such cases, consideration may be given to waiving penalties and/or interest in whole or in part for the period beginning on the first payment due date under the payment arrangement until the amounts owing are paid, provided the agreed payments are made on time.

14. Consideration would not generally be given to cancelling penalties based on an inability to pay or financial hardship unless an extraordinary circumstance has prevented compliance. However, there may be exceptional situations that may give rise to cancelling penalties, in whole or in part. For example, when a business is experiencing extreme financial difficulty, and enforcement of such penalties would jeopardize the continuity of its operations, the jobs of the employees and the welfare of the community, consideration may be given to providing relief of the penalties.

Factors to be considered when waiving or cancelling penalties and/or interest

15. Where an extraordinary circumstance beyond the person's control has prevented the person from complying with the Act, the factors listed below will be considered by the CRA in order to determine whether or not penalties and/or interest will be cancelled or waived.

- Does the person have a satisfactory history of voluntary compliance (i.e., have previous GST/HST returns been filed and payments made on time)?
- Has the person knowingly allowed an outstanding balance to exist upon which the penalties and/or interest have accrued?
- Has the person acted quickly to remedy the omission or the delay in compliance, which originally resulted in penalties and/or interest being charged?
- Is there evidence that the person exercised reasonable care and diligence (e.g., planned for anticipated disruptions) and was not negligent or careless in the conduct of its affairs? The onus is on the registrant to keep abreast of any new developments in the administration of the GST/HST so as to ensure continuing compliance.

Requests for more information

16. During the evaluation of these factors, the CRA may contact the person to request further information or clarification concerning the circumstances under which penalties and/or interest became payable.

Requests to cancel or waive penalties and/or interest

17. A person can request the cancellation or waiver of penalties and/or interest by writing to the tax services office or tax centre serving its area. Alternatively, the taxpayer can complete form RC4288, *Request for Taxpayer Relief*. A copy of this form is available from the CRA Web site at www.cra-arc.gc.ca/forms or by calling 1-800-959-2221.

Supporting information
required

18. To support a request to cancel or waive penalties and/or interest, the following information is required:

- the name, address and Business Number or account number of the person;
- the reporting periods involved;
- the type and nature of the extraordinary circumstances that prevented the person from complying;
- supporting documentation such as death certificates, doctor's statements or insurance statements;
- in cases involving financial hardship, a meaningful payment arrangement and full financial disclosure;
- supporting details of incorrect information given by the CRA in the form of written responses, published information or other objective evidence;
- where the incorrect information given by the CRA was verbal, the person should give all possible details such as date, time, name of the CRA official spoken to, and details of the conversation;
- a complete history of events, including what measures were taken (e.g., payments and payment arrangements) and when they were taken to resolve the non-compliance; and
- the name, address and telephone number where the person may be reached if more information or explanation is needed.

19. After considering the request, the facts of the case, and the legislation involved, the CRA will advise the person, in writing, of its decision to approve the request, or if the request is denied or partially approved, the reasons for the denial or partial approval of the request.

Refund interest

Refund interest paid
before April 1, 2007
ss 296(6)

20. By virtue of subsection 296(6), the Minister shall pay interest on any amount refunded to a person on any reassessment that cancels all or any portion of penalties and/or interest previously paid. Interest will be calculated beginning on the day that the amount was paid by the person and ending on the day the refund is paid by the CRA. This applies to amounts that were refunded before April 1, 2007.

Refund interest paid on or
after April 1, 2007
ss 296(6.1)

21. Effective April 1, 2007, pursuant to subsection 296(6.1), the Minister shall pay interest on any amount refunded to a person that cancels all or any portion of penalties and/or interest that the person paid, beginning 30 days after the day the Minister receives the taxpayer relief request in a manner satisfactory to the Minister.

Wash transactions

Meaning of "wash
transaction"

22. A wash transaction occurs where a supplier has failed to charge and collect the GST/HST from a registrant entitled to a full input tax credit. A wash transaction may also occur within a closely related or associated group of persons where input tax credits are claimed by the wrong entity. Where there is a wash transaction, the CRA will consider waiving or cancelling the portion of the penalty and interest, charged under section 280 and payable at the time of assessment, that is in excess of 4% of the tax not properly collected by the supplier where certain conditions are satisfied.

Subject to newly prescribed interest rate 23. For wash transactions that are subject to interest at the newly prescribed rate under section 280, the CRA will consider waiving or cancelling the portion of that interest that is in excess of 4% of the tax not properly collected by the supplier, provided certain conditions are met.

Voluntary Disclosures Program 24. The CRA's Compliance Programs Branch administers the Voluntary Disclosures Program (VDP), which provides protection from penalties and possible prosecution. For a disclosure of unremitted tax such as a wash transaction to be considered valid under this program, the disclosure must meet all four conditions listed below:

- it must be voluntary;
- it must be complete;
- it must involve a penalty; and
- it must include information that is over one year past due, or if less than one year past due, not initiated to simply avoid late filing or instalment penalties.

As with all disclosures of unpaid income tax, a disclosure of unremitted GST/HST is valid only if all four conditions listed above have been met. If there is no penalty applicable to the GST/HST disclosure (such as GST/HST not collected on a wash transaction), the disclosure does not fall under VDP, and as a result there is no relief from interest on the wash transaction.

More information 25. For more information on the waiving or cancellation of penalty and interest of a wash transaction, refer to GST/HST Memorandum 16.3.1, *Reduction of Penalty and Interest in Wash Transaction Situations*. For more information on voluntary disclosures, refer to Income Tax Information Circular IC00-1R2, *Voluntary Disclosures Program*.

Recourse mechanism for denied or partially approved taxpayer relief requests

Request for second review 26. A person who believes that the CRA has not exercised its discretion in a fair and reasonable manner may request, in writing, that the Director of the tax services office or tax centre serving its area review the situation. This second review is an impartial review of the original decision.

Required information 27. The person's request for a second review should include the following information:

- the reasons why the person disagrees with the CRA's decision (e.g., not all information was considered, or certain facts or details were not considered in their proper context); and
- any relevant new documents, facts or correspondence.

As with initial requests, a second review may be requested by using form RC4288, *Request for Taxpayer Relief*.

Applying to the Federal Court 28. The CRA will notify the person, in writing, of the results of the second review. If the person feels that discretion was not properly exercised during the CRA's review of the request for relief, the person can apply to the Federal Court for a judicial review. The Federal Court does not overturn the CRA decision. Its review is restricted to determining whether the CRA has exercised its discretion in a reasonable and fair manner. If the Federal Court rules that discretion was not exercised in a reasonable and fair manner, it refers the request back to the CRA for reconsideration.

More information 29. More information on the judicial review process and how to apply for a judicial review can be found on the Federal Court of Canada Web site www.fct-cf.gc.ca.

Due diligence defence

- Penalties not exigible if due diligence has been exercised 30. The Act does not specifically provide for a due diligence defence in the case of a penalty imposed under subsection 280(1) or section 280.1. The CRA accepts that, in cases where the CRA determines that a person has exercised due diligence, the penalty is not exigible. In these cases, the penalty imposed under these provisions will be either not charged by the CRA, or if already charged, cancelled by the CRA. The acceptance of a due diligence defence is limited to the cancellation of the penalty under subsection 280(1) or section 280.1 and will not result in the cancellation of interest payable under section 280.
- Onus on the person to demonstrate diligence 31. The onus is on the person who claims to have been duly diligent to demonstrate to the CRA that due diligence has been exercised. The CRA cannot suggest criteria to make this determination as each one is based upon the particular facts of that case. However, an examination of the reasons for the late or insufficient remittance or payment, or the late return, will often assist the CRA in determining whether a person has been duly diligent.
- Notice of objection 32. The appropriate recourse mechanism if a person believes that due diligence was exercised with respect to the assessed amount is to file a Notice of Objection.
- P-237 33. For further information on the due diligence defence, refer to GST/HST Policy Statement P-237, *The Acceptance of a Due Diligence Defence for a Penalty Imposed Under Subsection 280(1) of the Excise Tax Act for Failure to Remit or Pay an Amount When Required, and for a Penalty Imposed Under Section 280.1 for Failure to File a Return When Required*.

Enquiries by telephone

Technical enquiries on the GST/HST: 1-800-959-8287

General enquiries on the GST/HST: 1-800-959-5525 (Business Enquiries)

If you are located in Quebec: 1-800-567-4692 (Revenu Québec)

All technical publications on GST/HST are available on the CRA Web site at www.cra.gc.ca/gsthstech.