

# Fact Sheet

## Fairness provisions in the *Income Tax Act* and the *Excise Tax Act*

### Cancelling or waiving penalties and interest

In the early 1990s, **fairness provisions** were introduced into the *Income Tax Act* and the *Excise Tax Act*. These provisions give the Minister of National Revenue the discretion in certain situations to cancel or waive penalties and interest; to accept late-filed, amended, or revoked income tax elections; and to issue income tax refunds for individuals and testamentary trusts for tax years ending in the 10 previous calendar years.

What does this mean to you as a taxpayer? Simply put, the “provisions” or terms that were added to both pieces of legislation give the Canada Revenue Agency (CRA) the flexibility—under certain conditions—to set aside or cancel any penalties and interest that you may otherwise have to pay.

One day, you may find yourself in a position where circumstances that are completely beyond your control prevent you from meeting your obligations under the *Income Tax Act* or the *Excise Tax Act* [which deals with the goods and services tax/harmonized sales tax (GST/HST)]. For example, you may have been prevented from making a payment when it was due.

Such circumstances would include:

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

If any of these conditions are present, we have the authority to waive or cancel any penalties or interest that would normally have applied.

We can also cancel or waive interest or penalty charges if these charges were primarily the result of **our** actions. One example would be a situation where the information that we made available to you contained errors that led you to file your return or make payments based on incorrect information.

We may waive or cancel all or part of any interest and penalty charges where there is an inability to pay that is beyond your control. For example, collection can be suspended if you cannot pay due to financial hardship that you are experiencing because you lost your employment.

Another example would be a situation where you are unable to fulfill a reasonable payment arrangement because the interest and penalty charges absorb a significant part of the payments. In



such a case, we may consider waiving interest and penalty charges in full or in part beginning from when your payments start and ending when the amounts owing are paid. However, this would only apply if you make all of your agreed payments on time in accordance with your ability to pay.

Either you or your authorized representative can make a written request to your tax services office to cancel or waive interest and penalties. More information is available in Information Circular 92-2, ***Guidelines for the Cancellation and Waiver of Interest and Penalties***, and in Excise GST memorandum 500-3-2-1, ***Cancellation or Waiver of Penalties and Interest***.

### **Refunds and late, amended, or revoked elections**

Normally, the CRA does not issue refunds beyond a three-year period. However, we can issue income tax refunds or apply them against a balance owing beyond the normal three-year limit for individuals and testamentary trusts (a trust or estate that is created on the day a person dies) when:

- the refund or reduction would have been made if the return had been filed on time or the request had been made on time; and
- the necessary adjustment is correct in law and was not previously allowed.

The fairness provisions also allow us to accept certain late, amended, or revoked elections under the *Income Tax Act* when they result from circumstances beyond your control or when:

- tax consequences resulted that you had not intended, and you took reasonable steps to comply with the law; and
- you acted on incorrect information that we provided to you.