

Harmonization of Administrative Provisions (Standardized Accounting) Legislative Amendments to Part IX of the *Excise Tax Act* Questions and Answers

For the past few years, the federal government has been working on an initiative referred to as “Standardized Accounting”. The objective of this initiative is to simplify tax compliance for businesses by harmonizing various accounting, interest and penalty provisions of the federal acts that the CRA administers. These include the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, and the *Air Travellers Security Charge Act*.

Legislative amendments, which were previously announced in the February 18, 2003 Budget, began the implementation of Standardized Accounting by harmonizing a number of accounting, interest, penalty and related administrative and enforcement provisions of the *Excise Tax Act* (non-GST) and the *Income Tax Act*. These became law, effective July 1, 2003. The Standardized Accounting provisions, referred to in Annex 3, *Tax Measures Supplementary Information*, of the 2006 Federal Budget and included in Bill C-13, which received Royal Assent on June 22, 2006, combined with the previous legislative amendments of 2003, will provide an integrated set of rules for payment due dates, interest, and penalties that will simplify the system for both business and government administration.

Part IX of the *Excise Tax Act* (the ETA) imposes the GST/HST. We are providing the following series of questions and answers to assist you in understanding what changes are being made to Part IX of the ETA in order to implement the Standardized Accounting provisions, as well as the changes to the *Income Tax Act* that may have an impact on GST/HST registrants. These amendments will become effective on April 1, 2007.

Should you have any questions on these legislative amendments, please call 1-800-959-8287.

Table of contents

Restrictions on refunds and rebates	2
Interest	2
Penalties	4
Miscellaneous	6

More Ways to Serve You!
Pour vous servir encore mieux !

La version française du présent document est intitulée
*Harmonisation des dispositions administratives
(comptabilité normalisée) – Modifications
législatives à la partie IX de la Loi sur la taxe
d'accise.*



Canada Revenue
Agency

Agence du revenu
du Canada

Canada

Restrictions on refunds and rebates

1. Under subsection 229(2), a refund of net tax for a reporting period will be not be paid to a person unless the person has filed all outstanding GST/HST returns that are required to be filed under Division V for the reporting period and all previous reporting periods. Will this requirement change?

Yes. Effective April 1, 2007, under amended subsection 229(2), a person will not be paid at any time a net tax refund for a reporting period until all returns of which the Minister has knowledge, and that are required to be filed on or before that time by the person under the ETA, the *Income Tax Act*, the *Excise Act, 2001*, and the *Air Travellers Security Charge Act* have been filed.

2. Section 230 requires the Minister will refund to a person an overpayment of net tax for a reporting period, provided that the person is up to date in filing its GST/HST returns. Will this requirement change?

Yes, it will change. Effective April 1, 2007, under amended subsection 230(2), a person will not be refunded at any time an amount paid on account of net tax for a reporting period until all returns of which the Minister has knowledge, and that are required to be filed on or before that time by the person under the ETA, the *Income Tax Act*, the *Excise Act, 2001*, and the *Air Travellers Security Charge Act* have been filed.

3. Will there be a restriction on the payment of rebates under the ETA, if a person has outstanding returns?

Yes. Effective April 1, 2007, under new section 263.02, a person will not be paid a rebate under the ETA at any time until all returns of which the Minister has knowledge, and that are required to be filed on or before that time under the ETA, the *Income Tax Act*, the *Excise Act, 2001*, and the *Air Travellers Security Charge Act* have been filed.

4. Will a person be restricted from receiving payment of a net tax refund or a rebate under the ETA if the person owes an amount from any of the Acts that the CRA administers?

Yes. Beginning April 1, 2007, any refund or rebate owing to a person will not be paid to the person if the person has any amounts owing from the ETA, the *Income Tax Act*, the *Excise Act, 2001*, or the *Air Travellers Security Charge Act*. Instead, any refund or rebate owing to a person may be automatically offset against a debt the person owes to the Receiver General from any of these Acts. There is no legislative amendment needed to implement this change, as all these Acts currently have set-off provisions.

Interest

5. Under subsection 229(3), interest on a refund of net tax for a reporting period is paid beginning on the day that is 21 days after the later of:

- the date all GST/HST returns for that reporting period and previous reporting periods have been filed; and
- the date the GST/HST return in which the refund is claimed is filed and ending on the day the refund is paid.

Will this requirement change?

Yes. Interest on a refund of net tax for a reporting period will be paid beginning on the day that is 30 days after the later of the day the return in which the refund is claimed is filed with the Minister, and the day

following the last day of the reporting period, and ending on the day the refund is paid. The amendment to subsection 229(3) applies to any net tax refund for a reporting period that ends on or after April 1, 2007.

6. Subsection 230(3) provides the authority for the Minister to pay interest on a refund of an amount that was paid on account of net tax for a reporting period. This interest begins 21 days after the later of the day the person filed the return on which the refund was claimed and the day the person has filed all its outstanding GST/HST returns for that reporting period, and for previous reporting periods. Will this provision change?

Yes. If a refund of an overpayment of net tax is paid to a person, the Minister will pay interest on the refund beginning on the day that is 30 days after the later of the day the return for the reporting period is filed with the Minister, and the day following the last day of the reporting period, and ending on the day the refund is paid. The amendment to subsection 230(3) applies to any refund in respect of a reporting period that ends on or after April 1, 2007.

7. Under subsection 297(4), when a GST/HST rebate is paid to a person, the Minister will pay the person interest on the rebate beginning on the day that is:

- **in the case of a rebate filed under section 257, 258 or 259, 21 days,**
- **and in any other case, 60 days**
- **after the application in which the rebate is claimed is filed with the Minister and ending on the day the rebate is paid.**

Will this change?

Yes. Subsection 297(4) is amended so that interest will be paid beginning on the day that is 30 days after the application in which the rebate is claimed is filed with the Minister and ending on the day the rebate is paid. For any rebate application filed under section 259, 259.1, or 261.01, this amendment applies where the claim period ends on or after April 1, 2007. For all other rebates, this amendment applies where the rebate is claimed in an application filed with the Minister on or after April 1, 2007.

8. Will the prescribed interest rate that is paid on a refund of net tax, an overpayment of net tax, or on a rebate of GST/HST change?

Yes. The prescribed interest rate will change. Currently, the prescribed interest rate is determined by reference to the rate charged on 90-day Treasury Bills and is adjusted quarterly. The *Interest Rate (Excise Tax Act) Regulations* will be amended so that the prescribed interest rate paid on a refund of net tax or on a rebate of GST/HST will be the basic rate, plus 2%. “Basic rate” will be defined in the regulations and will be based on the rate charged on 90-day Treasury Bills, adjusted quarterly, and rounded up to the nearest whole percentage (expressed as a percentage per year).

This change will be effective April 1, 2007.

9. Will the prescribed interest rate that is charged on an overdue amount change?

Yes, the prescribed interest rate charged on an overdue amount will change. Currently, the prescribed interest rate is determined by reference to the rate charged on 90-day Treasury Bills and is adjusted quarterly. The *Interest Rate (Excise Tax Act) Regulations* will be amended so that the prescribed interest rate charged on an overdue amount will be the basic rate plus 4%. “Basic rate” will be defined in the regulations and will be based on the rate charged on 90-day Treasury Bills, adjusted quarterly, and rounded up to the nearest whole percentage (expressed as a percentage per year).

This change will be effective April 1, 2007.

**Harmonization of Administrative Provisions (Standardized Accounting)
Legislative Amendments to Part IX of the *Excise Tax Act***

10. Will the prescribed interest charged on an overdue amount be deductible under the *Income Tax Act*?

No. Under new subparagraph 18(1)(t)(ii) of the *Income Tax Act*, arrears interest paid or payable under Part IX of the ETA will be non-deductible. This amendment will apply to taxation years that begin on or after April 1, 2007.

Penalties

11. Will there still be a 6% penalty imposed under subsection 280(1) for overdue amount?

No. Effective April 1, 2007, there will no longer be a 6% penalty charged on overdue amounts. The interest rate imposed under subsection 280(1) on overdue amounts will be the basic rate, plus 4%. Basic rate” will be defined in the regulations and will be based on the rate charged on 90-day Treasury Bills, adjusted quarterly, and rounded up to the nearest whole percentage (expressed as a percentage per year).

12. Once the 6% penalty imposed under subsection 280(1) is removed, and the new prescribed interest rate applies, will a supplier be entitled to relief of a portion of the interest payable on an assessment if the assessment relates to a “wash transaction”?

A “wash transaction” occurs where a supplier has failed to charge and collect GST/HST from a registrant that is 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. Currently, where there is a wash transaction, the CRA will consider waiving or cancelling the portion of the penalty and interest, 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.

For wash transactions that will be subject to interest at the new prescribed rate, 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 that certain conditions are satisfied.

The GST/HST Memoranda Series 16.3.1, *Reduction of Penalty and Interest in Wash Transaction Situations*, is being revised to take into account the new prescribed interest rate, and the removal of the 6% penalty imposed under subsection 280(1).

13. Now that there will be lower prescribed interest rates for refunds and rebates than for amounts owing, how will interest be calculated on late or deficient instalment payments where there are also early or overpaid instalment payments made during the year?

Currently, if a person fails to pay all or part of an instalment payment required to be paid under section 237, subsection 280(2) imposes both a penalty of 6% per year and interest at the prescribed rate on the late or deficient instalment. Subsection 280(3) provides an offset mechanism that limits the total interest and penalties payable in respect of instalments, so that interest and penalties under subsection 280(2) are only payable to the extent they exceed interest plus the 6% penalty calculated by reference to overpaid or early instalments.

This offset mechanism will continue in that offset interest on overpaid or early instalment payments will be applied at the same rate as charged.

14. What is the new failure to file penalty for overdue GST/HST returns?

A failure to file penalty will be charged on GST/HST returns filed late. This penalty, under new section 280.1, is equal to 1% of the amount overdue on the return, plus .25% of the overdue amount times the number of complete months the return was overdue, to a maximum of 12 months.

This failure to file penalty applies in respect of:

- (a) any return that is required to be filed on or after April 1, 2007, and
- (b) any return that is required to be filed before that day if it is not filed on or before March 31, 2007, in which case the return is deemed to be required to be filed on or before March 31, 2007, for the purposes of calculating a penalty under that section.

15. Will the new failure to file penalty be deductible under the *Income Tax Act*?

No, the new failure to file penalty will not be deductible under the *Income Tax Act*.

16. Will the fairness provisions apply to the new failure to file penalty under new section 280.1?

Yes, the fairness provisions will apply to the failure to file penalty. Subsection 281.1(2) of the ETA, which authorizes the Minister to waive or cancel penalties payable under subsection 280(1), is being amended to include the failure to file penalty, effective April 1, 2007.

17. Will the 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*, be revoked?

This policy statement outlines the position of the CRA on accepting a due diligence defence in respect of the penalty imposed under subsection 280(1). This particular subsection provides that where a person fails to pay or remit an amount when required, the person shall pay on that amount a penalty equal to 6% per year and interest at the prescribed rate.

This policy statement will not be revoked. It will continue to be applicable to assessments for which the 6% penalty under subsection 280(1) applies.

18. Is the penalty imposed under section 283 of the ETA for failure to answer a demand being changed?

Currently, any person who fails to file a return when required pursuant to a demand is liable, under section 283, to a penalty equal to the greater of \$250 and 5% of the amount of tax payable or net tax remittable for the period or transaction designated in the demand that was unpaid or unremitted on the day that the return was due.

For any demand served by the Minister on or after April 1, 2007, the penalty will be reduced to a flat \$250.

19. What changes are being made with respect to fairness requests for the waiver or cancellation of interest or penalty?

Fairness requests will be extended to include the new failure to file penalty under section 280.1. Consistent with the previous amendment to the fairness provisions under the *Income Tax Act*, a 10-year rolling window will be set for fairness requests.

**Harmonization of Administrative Provisions (Standardized Accounting)
Legislative Amendments to Part IX of the *Excise Tax Act***

Effective April 1, 2007, section 281.1 will be amended so that the Minister may waive or cancel all or any portion of the interest or penalty payable under section 280 in respect of a reporting period of a person, or the penalty payable by the person under section 280.1 in respect of a return for a reporting period, on or before the day that is 10 calendar years after the end of the reporting period.

As well, effective April 1, 2007, in situations where the person has paid penalty or interest and this amount is subsequently cancelled, under new subsection 296(6.1), the Minister will refund the amount to the person, together with interest on that amount beginning on the day that is 30 days after the day the Minister receives the fairness request, and ending on the day the refund is paid to the person.

Under new subsection 296(7), however, this amount will not be paid to the person at any time until all returns of which the Minister has knowledge, and that are required to be filed at or before that time under the ETA, the *Income Tax Act*, the *Excise Act, 2001*, and the *Air Travellers Security Charge Act* have been filed.

Under new subsection 221.2(1) of the *Income Tax Act*, any misallocated payment that becomes payable by a person under the ETA, the *Income Tax Act*, the *Air Travellers Security Charge Act*, or the *Excise Act, 2001*, will be transferred to the appropriate account, on application by the person, effective the date of the original payment. This amendment applies to applications made on or after April 1, 2007.

Miscellaneous

20. What will be the changes to the application of penalty and interest in situations where the Minister extends the time for filing a GST/HST return, or the time that any net tax or tax is remittable or payable?

Currently, under section 281, the Minister may extend the time for filing a return, or extend the time to remit or pay net tax or tax. Under this provision, the accrual of the 6% penalty under section 280 is suspended during the extension period. However, interest on any amount payable continues to accrue throughout the period of extension.

The failure to file penalty imposed under new section 280.1, or any interest imposed under section 280, will not apply in respect of the return or the amount required to be remitted or paid until after the extension period expires, and will only apply in respect of the period after extension. This amendment will apply in respect of any extension of time that expires on or after April 1, 2007.

21. If a person's payment is misallocated to the wrong account (e.g., a payment posted to a person's excise tax account should have been posted to the person's GST/HST account), what will be the effective date of the transfer of the payment to the correct account?

Under new subsection 221.2(1) of the *Income Tax Act*, any misallocated payment that becomes payable by a person under the ETA, the *Income Tax Act*, the *Air Travellers Security Charge Act*, or the *Excise Act, 2001*, will be transferred to the appropriate account, on application by the person, effective the date of the original payment. This amendment applies to applications made on or after April 1, 2007.