



NO.: **82-6R6**

DATE: November 21, 2007

SUBJECT: **Clearance Certificate**

*This circular cancels and replaces Information Circular 82-6R5 dated August 2, 2006.*

1. This circular explains the need for a clearance certificate issued under the *Income Tax Act*. To ask for a clearance certificate, complete Form TX19, *Asking for a Clearance Certificate*. Also, give us the documents we ask for on Form TX19. This will help us to issue the certificate without delay.

### **Why you need a clearance certificate**

2. Under subsection 159(2) of the *Income Tax Act* (the Act), a legal representative, which we define in paragraph 3, has to get a clearance certificate before distributing property that he or she controls in their capacity as the legal representative. As a legal representative, if you distribute the property without a certificate, you are liable for any unpaid amounts (see paragraphs 4 and 5). You do not need a clearance certificate before each distribution, as long as you keep enough property to pay any liability to us.

3. A legal representative is a person who administers, winds up, controls, or otherwise deals with a property, business, or estate of another person who may be an individual, a trust, or a corporation. The legal representative for the purposes of subsection 159(2) must be an assignee, liquidator, curator, receiver of any kind, trustee, heir, administrator, executor, committee, or any other like person other than a trustee in bankruptcy. The reference to any other like person includes any person acting as a liquidator, whether or not the person was formally appointed. For instance, in a voluntary dissolution, there may be no formally appointed liquidator and the responsibility may be assumed by an auditor, director, officer, or other person. The facts of each particular case will determine whether a person is a legal representative.

4. A clearance certificate certifies that all amounts for which the taxpayer is, or can reasonably be expected to become, liable under the Act at or before the time of distribution have been paid, or that the Minister of National Revenue has accepted security for payment. The certificate applies to amounts for which you are or may become liable for payment as the legal representative. These amounts include all income taxes (including provincial and territorial taxes that we administer), along with any interest and penalties. The certificate also covers the payment of any

outstanding Canada Pension Plan contributions and Employment Insurance premiums, including any associated interest and penalties.

5. If you do not get a clearance certificate before you distribute property, you are liable for unpaid amounts, whether assessed before or after the actual distribution of property. You will be personally liable for the taxpayer's debt, up to the value of the property you distributed. Under proposed legislation, for assessments completed after December 20, 2002, you will also be responsible for any and all interest that is charged as a result of these assessments.

6. When you give up control and transfer a property to the person entitled to receive it, we consider you to have distributed the property on that date. The date on which a person acquires the right to receive a property does not determine the distribution date.

### **How to ask for a clearance certificate**

7. To ask for a clearance certificate, you have to complete Form TX19, *Asking for a Clearance Certificate*. Send it to the Assistant Director, Audit, at your tax services office. Usually, that office will process the certificate. However, under some conditions, another tax services office may process your certificate. This may happen, for example, if the deceased's properties are located in an area served by a tax services office other than yours.

8. To avoid delays, make sure Form TX19 is as complete as possible, and include the attachments. Identify the person(s) asking for the certificate by providing the name, address, telephone number, and title (for example, executor, trustee, liquidator, administrator). For a deceased person, Form TX19 has to include the full name, last address, social insurance number, and date of death. For a trust, include the name of the trust, the name and address of the trustee(s), the trust account number, and the wind-up date. In the case of a corporation, give the full corporate name, the Business Number, and the wind-up date.

9. If you have not sent us the following documents, attach them to Form TX19:

- (a) a copy of the will, including any codicils, renunciations, or disclaimers, and all probate documents;

- (b) if the individual died intestate, a copy of the document appointing an administrator (for example, the Letters of Administration or, in Quebec, Letters of Verification issued by a probate court). Also attach the details of the proposed distribution of assets, including the names, addresses, and social insurance numbers or account numbers of the beneficiaries, and their relationship to the deceased;
- (c) a copy of the trust document;
- (d) a statement showing the properties and distribution plan, including the date chosen for the distribution of properties, and a list of the recipients of each of the properties. The statement should describe each property, its adjusted cost base, and the fair market value at the date of death or at the date of distribution. If a statement of properties has been prepared for a probate court, we will usually accept a copy, and a list of any properties, such as real estate held in joint ownership, RRSPs with named beneficiaries, etc., that the deceased owned before death and that passed directly to beneficiaries;
- (e) any other documents that are necessary to prove that you are the legal representative; and
- (f) a letter of authorization that you have signed if you, as the legal representative, want us to communicate with someone else.

10. When you receive the clearance certificate, you have to complete, as soon as possible, the actual transfer or distribution of any property over which you have control.

### Issuing a clearance certificate

11. All clearance certificates will be issued on Form TX21, *Clearance Certificate*. We will issue a clearance certificate only when:

- (a) you have filed and we have assessed the required tax return(s); and
- (b) we have received or secured all amounts for which the taxpayer is liable. These amounts include income tax (including the provincial and territorial tax that we administer), Canada Pension Plan contributions, Employment Insurance premiums, interest, and penalties.

For an estate or trust, where the provisions of subsections 106(3), 107(4), or 107(5) apply to a distribution, and where any tax payable by the estate or trust can be determined only after the fair market value of the property to be distributed has been determined on the date of distribution, we will issue a clearance certificate as long as you do **all** of the following:

- (a) you establish a scheme of distribution by a date chosen by you, which is prior to the date of your request for a clearance certificate (see paragraph 12);
- (b) you calculate the tax payable as if the distribution had occurred on the chosen date;

- (c) you file a final tax return for the tax year ending on the chosen date and pay any taxes, interest, and penalties that are chargeable against or payable out of the estate or trust property; and
- (d) you submit your request in writing, and include a statement that you will complete the actual transfer of all the property of the estate or trust as soon as possible after you receive the clearance certificate.

We may not issue a clearance certificate if you have not filed a tax return or paid an amount for which the estate or trust is liable, or if there is an indication that the actual distribution will not take place as soon as possible after we issue the clearance certificate.

Once we issue the certificate, we consider the chosen date to be the actual date of distribution for tax purposes and regard the estate or trust representative as holding the properties for the beneficiaries since that date.

Do not file Form TX19, *Asking for a Clearance Certificate*, until you receive the assessment notice(s). Other than for an estate or trust, however, there may be exceptions (see paragraph 12).

12. There may be times when you cannot determine the date of distribution because it may depend on completing the final assessment and issuing the clearance certificate. Since the final assessment has to include the period up to and including the date of distribution of property, it may seem we cannot issue the final assessment or the clearance certificate. For example, this situation could arise when the properties of an operating corporation continue to generate income until they are distributed. In such circumstances, you should contact the Assistant Director, Audit, at the tax services office where you file Form TX19 to make alternative arrangements.

13. A clearance certificate covers only the properties you controlled from the date you received control to the date you asked for the clearance certificate. After you receive a clearance certificate, you may discover another property that affects the amounts of income or capital gains you reported on the taxpayer's tax return(s). If so, you will have to get another clearance certificate before you distribute the newly identified property. In this circumstance, you should contact the Assistant Director, Audit, at the tax services office where you file Form TX19.

### Individuals

14. For an individual, you should ask for a clearance certificate only for properties you will distribute in your capacity as a legal representative.

**Estates or trusts**

15. There may be situations when an estate or a trust will continue to exist to pay or allocate its income to the beneficiaries until a certain situation occurs (for example, a beneficiary reaches the age of majority). In such cases, we do not consider the payment or allocation of trust income to a beneficiary as a distribution of property. As a result, you do not need to ask for a clearance certificate.

**Corporations**

16. Under subsection 87(2) (amalgamation), you can transfer a corporation's assets and liabilities on a rollover basis to another corporation. If all conditions of the rollover are satisfied, the amalgamation should not create any additional tax liability. In this case, you do not need a clearance certificate. If you are not sure that the rollover is complete, you should apply for a clearance certificate. For any other type of corporate dissolution, you should get a clearance certificate before you distribute the corporate property.

***Excise Tax Act (goods and services tax/harmonized sales tax)***

17. Section 270, Part IX of the *Excise Tax Act* (goods and services tax) includes similar provisions requiring you, as a **receiver** or **representative**, to get a clearance certificate by completing Form GST352, *Application for Clearance Certificate*, before you distribute any property or money you control. For more information on clearance certificates related to the goods and services tax/harmonized sales tax, contact your tax services office.