

NO.: **98-1R**

DATE: September 15, 2000

SUBJECT: **Collections Policies**

This document cancels and replaces Information Circular 98-1, Collection Policies, dated July 13, 1998 concerning income tax collection policies.

This circular gives you a general overview of many of the collections policies that we at Canada Customs and Revenue Agency (CCRA) have for individuals, businesses, and organizations that owe money to the Crown. It will help you understand your rights and responsibilities when dealing with us. However, it does not provide in-depth details of the topics it discusses.

Therefore, if you have questions about policies not covered in this circular, would like confirmation of specific aspects of those discussed, or need any additional information, please contact the Revenue Collections Division of your tax services office. For the telephone number of your tax services office, see the listing in the government section of your telephone book.

We have to modify our collections policies periodically since legislative provisions and requirements can change at any time. We make every effort to provide updates in a timely manner. However, if a discrepancy should arise between Information Circular 98-1R, *Collections Policies*, and current legislation or our most recent policies, the latter shall take precedence.

The circular describes collections policies for taxes, duties, contributions, and premiums that you are required to pay under the *Income Tax Act*, *Excise Tax Act*, *Excise Act*, *Customs Act*, *Canada Pension Plan (CPP)*, *Unemployment Insurance Act (UI)*, and *Employment Insurance Act (EI)*.

Please note that this circular only deals with those aspects of the *Canada Pension Plan*, *Unemployment Insurance Act*, and *Employment Insurance Act* most directly related to collections. You can get more information about payroll deductions in the employers' guide T4001, *Payroll Deductions (Basic Information)*, or by contacting your tax services office.

This circular discusses the following topics:

1. Payment and other obligations
2. Collection and enforcement
3. Fairness provisions
4. Disagreement with an amount owing

5. Acceptance of security
6. Legal action to collect
7. Collection restrictions
8. Exceptions to collection restrictions
9. Objections and appeals
10. Repayment of disputed amounts
11. Refunds applied to other government debts
12. Special provisions
13. Amounts owing by estates of deceased persons
14. Confidentiality
15. Trust funds
16. Customs
17. A final word

Sections 1 to 14 of this circular describe general policies on amounts owing under the *Income Tax Act* and the *Excise Tax Act*. Some requirements related to source deductions are also discussed.

Section 15 discusses collections policies regarding payroll and other source deductions, and Goods and Services Tax/Harmonized Sales Tax (GST/HST) amounts that are deemed to be held in trust, under either the *Income Tax Act* or the *Excise Tax Act*. These amounts, deducted from employees' wages and other individuals, and GST/HST that registrants collect on supplies of goods and services, are treated differently from other taxes owing under both Acts.

Section 16 deals **only** with the collection of **amounts owing** under the *Customs Act* and other legislation related to goods imported into Canada. While you can get more information about collection of such amounts from your tax services office, you should direct questions on any other issues related to the importation of goods to your nearest customs office.

Section 17 provides a final word and explains how to get more information.

In this circular, we use the term **person** to include, as applicable, individual and corporate taxpayers, employers and remitters of source deductions, GST/HST registrants, individuals and corporations that receive GST/HST rebates, licencees, importers/exporters, customs brokers, and international travellers.

1. *Payment and other obligations*

Employees who file an income tax return each spring will likely have paid part or all of their taxes through amounts their employers deducted from their income. The amount an employer deducts depends on the credits employees claimed on Form TD1, *Personal Tax Credits Return*. If an employee's situation changes during the year, or if the information on the form is out-of-date, the employee should fill out a new TD1 form so that the employer can deduct the proper amount of tax from the employee's income. If the employer makes regular deductions, it is less likely that the employee will have to pay a large tax balance when it is time to file an income tax return.

Self-employed and other individuals whose income tax is not payroll or source deducted, or only partially so, may have to make instalment payments. Doing so will help them avoid a large balance owing when it is time to file their income tax return. Please see the pamphlet P110, *Paying Your Income Tax by Instalments*, to determine if you should be making instalment payments for your **current** tax year. We charge interest and in some cases a penalty, on late or insufficient instalments.

Most corporations have to make monthly income tax instalment payments throughout the year for their **current** tax year or fiscal year. This measure helps ensure that any balance owing at the end of a corporation's fiscal year will be minimal. We charge interest on late or insufficient corporation income tax instalments. For more details on corporation income tax instalments, please see publications T4012, *T2 Corporation – Income Tax Guide*, T7B-CORP, *Corporation Instalment Guide*.

Balances owing under the *Income Tax Act* are payable no later than:

- April 30 of the following tax year, for **individuals**;
- 90 days after the end of the tax year, for a **trust** (T3);
- April 30 of the following year, for a **deceased person** who has died within the period of January 1 to October 31;
- six months after the date of death, for a **deceased person** who has died within the period of November 1 to December 31.

(For greater detail, see publication T4011, *Preparing Returns for Deceased Persons*.)

- two months or, in some cases, three months from the end of the fiscal period, for **corporations** (even though they have up to 6 months to file their T2 return); and
- the 15th day of the month after the month they were deducted (must be **received** on or before the 15th) for **payroll deductions**, except for:
 - (i) **accelerated remitters** who must remit more frequently; or
 - (ii) **small business employers** who are notified by us that they qualify for quarterly remittances of payroll deductions.

(For greater detail, see the *employers' guide* T4001, *Payroll Deductions [Basic Information]*)

Balances owing for GST/HST under Part IX of the *Excise Tax Act* are payable no later than:

- the end of the month following the end of the reporting period, for a GST/HST registrant **who is a monthly or quarterly filer**; or
- the end of the third month following the end of the reporting period, for a GST/HST registrant **who is an annual filer**.

(For greater detail, see publication RC4022, *General Information for GST/HST Registrants*.)

Balances owing under Parts I to VII of the *Excise Tax Act* for other taxes are payable as follows:

- an instalment by the 21st day of the following month or accounting period; then the balance owing, if any, by the last working day of that month or accounting period, for **licences, who are monthly, semi-annual, or seasonal filers**; and
- more frequently for **large taxpayers** (see section 79.1 of the *Excise Tax Act*).

Under the *Income Tax Act*, we charge interest at a prescribed rate on any unpaid amount assessed. The interest is compounded daily from the date the amount is due until it is paid.

We also charge interest at a prescribed rate on any unpaid CPP, UI, and EI amounts. The interest is compounded daily from the date the amount is due until it is paid.

Under the *Excise Tax Act*, we charge interest and penalty on unpaid GST/HST and these are also compounded daily. For taxes other than GST/HST, we charge a penalty of 1/2% and interest at the prescribed rate for each month, or fraction of a month, or accounting period, until the amount owing is paid.

2. *Collection and enforcement*

Any amount you owe is payable immediately when assessed or reassessed. However, after sending you a notice of the debt, we will make additional requests for payment, either by mail or by telephone if you have not paid the balance owing. You will have an opportunity to discuss your assessment or reassessment with our Client Services personnel if need be.

Except for the types of assessments listed in section 8 of this circular, "*Exceptions to collection restrictions*," we will not usually start legal action until 90 days after the day we mail a *Notice of Assessment*, *Notice of Reassessment*, *Notice of Determination*, or *Notice of Re-determination*.

We will consider payment arrangements when you have tried all reasonable ways of getting the necessary funds, either by borrowing or rearranging your financial affairs, and you still cannot pay the balance in full. If you get into this situation, you should contact the Revenue Collections Division of your

tax services office to discuss a mutually satisfactory short-term payment arrangement based on your ability to pay.

To help us determine your ability to pay, you will have to make full disclosure and give evidence of your income, expenses, assets, and liabilities. Collections officers may verify the information you provide before accepting an arrangement.

Should you not agree with the decision made by a collections officer, you have the right to discuss the matter with his or her supervisor. Officers will provide you with their supervisor's name and telephone number on request.

However, if your debt remains unpaid with no mutually acceptable payment arrangement, we may take legal action such as garnisheeing your income (i.e., we may intercept funds payable to you) or initiate other legal action such as directing a sheriff to seize and sell your assets. (See section 6 of this circular, "Legal action to collect.")

If you cannot make a payment on your liability, we may allow you to postpone payment until your financial situation improves. During that time, any interest and penalties that apply will continue to accrue on the liability.

There may be exceptional situations when we may waive or cancel penalties and interest under the fairness provisions. (See section 3 of this circular for greater detail.)

3. *Fairness provisions*

The "fairness provisions" apply to interest and penalty only.

We may waive or cancel part or all of penalty and interest charges for tax years after 1984 under the *Income Tax Act*, and interest and penalties payable after 1990 under section 280 (GST/HST charges) of the *Excise Tax Act*. We may consider these actions when you are prevented from making a payment when due, or otherwise complying with the *Income Tax Act* or the *Excise Tax Act* because of circumstances beyond your control. Such circumstances include:

- natural or man-made disasters, such as a flood or 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 the immediate family.

We may also cancel or waive interest or penalty charges if such charges were mainly the result of our own actions, such as if material available to the public contained errors which led taxpayers to file returns or make payments based on incorrect information.

Also, we may waive or cancel all or part of interest and/or GST/HST penalty charges where there is an inability to pay beyond your control. For example:

- collection has been suspended because of an inability to pay caused by the loss of employment and the person is experiencing financial hardship; or

- a person is unable to conclude 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 penalties in full or in part, for the period from when payments start until amounts owing are paid, provided the agreed payments are made on time in accordance with your ability to pay.

You, or your authorized representative, can make a written request to your tax services office to cancel or waive interest and penalties. You can get more details 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*.

We can usually finalize a fairness request within four to six weeks, if we have all the supporting information.

4. *Disagreement with an amount owing*

If you disagree with, or if you do not understand an assessment or a reassessment, you should contact the Client Services Division of your tax services office immediately for an explanation. If you cannot resolve the matter in this manner, you can file an objection. In section 9 of this circular, we discuss objections and appeals.

5. *Acceptance of security*

We may accept adequate security instead of payment under some circumstances.

For example, if the Tax Court of Canada dismisses your income tax appeal and you exercise your right to appeal to a higher court, we will ask you to immediately pay the full amount owing regardless of your further rights to appeal. However, we will accept adequate security instead of payment, such as a Bank Letter of Guarantee (Letter of Credit).

In addition, for certain elections under the *Income Tax Act*, you have to provide adequate security for us to accept the election.

You or your representative should contact the Revenue Collections Division of your tax services office for more information about security, such as mandatory clauses for Bank Letters of Guarantee or Mortgages.

6. *Legal action to collect*

If you do not pay an amount voluntarily, we may take legal action to:

- garnishee wages or other income sources;
- seize and sell assets; or
- use any other means under any applicable statutes or laws to collect an amount owing.

Garnishment action allows us to intercept funds payable to you by a third party, such as wages or other income sources.

Similarly, if any other federal government department owes you money, we can issue a requirement for set-off to that department to have all or part of that money sent to us. We will then apply this amount against your outstanding balance. (See section 11 of this circular, “Refunds applied to other government debts,” for greater detail.)

We will notify you by mail of the garnishment or set-off action.

Both the *Income Tax Act* and the *Excise Tax Act* provide for the registration of a certificate in the Federal Court of Canada for unpaid amounts. Once registered, the certificate has the same force and effect as a judgment obtained in the Court. When the debt is certified, we will usually notify you by mail. If you still do not pay the amount, we may obtain a writ or memorial and seize property, and have it advertised and sold by the sheriff.

You have to pay all reasonable costs and charges incurred to collect the amount certified, and are still liable for any remaining balance. All proceeds from the sale remaining after costs and charges are paid will be applied to the debt.

Once we undertake set-off, garnishment, or other legal proceedings, we will not usually withdraw them until the account is paid in full, or it can be shown that the action is causing undue hardship.

7. Collection restrictions

Except as outlined in section 8 of this circular, we cannot normally initiate the following types of legal action until 90 days after the day we mail the *Notice of Assessment* or *Notice of Reassessment*:

- begin legal proceedings in a court;
- certify the amount in the Federal Court under section 223 of the *Income Tax Act* or section 83 of the *Excise Tax Act*;
- require a third party who owes a person money to make a payment under subsection 224(1) of the *Income Tax Act* or section 84 of the *Excise Tax Act*;
- require an institution or other third party who is lending or advancing a person money to make a payment under subsection 224(1.1) of the *Income Tax Act*;
- require the retention of an amount the federal government owes to a person, by deduction or set-off under section 224.1 of the *Income Tax Act* or section 85 of the *Excise Tax Act*;
- require a person to turn over money under subsection 224.3(1) of the *Income Tax Act*; and
- give a notice, issue a certificate, or make a direction under subsection 225(1) of the *Income Tax Act*.

8. Exceptions to collection restrictions

The restrictions to our ability to take legal action, outlined in section 7 of this circular, **do not apply** to assessments issued for the following items:

- Scientific research and experimental development tax credits – an amount payable under Part VIII of the *Income Tax Act*.
- Amounts deemed to be held in trust, including:
 - (i) an amount deducted or withheld, and required to be remitted or paid under the *Income Tax Act*, the *Canada Pension Plan*, *Unemployment Insurance Act*, *Employment Insurance Act*, or a regulation made under those Acts (i.e., payroll and other source deductions); and
 - (ii) GST/HST collected as or on account of tax under Division II, Part IX of the *Excise Tax Act*. There is statutory authority which allows an amount of any input tax credit or deduction from net tax which you are entitled to claim to be deducted from the trust monies. (See section 15 of this information circular, “Trust funds.”)
- Non-resident tax – an amount of tax required to be paid under section 116, or under a regulation made under subsection 215(4) of the *Income Tax Act*, that has not been paid.
- Penalties – the amount of any penalty payable for failure to remit or pay a deemed trust amount, as and when required by the *Excise Tax Act*, *Income Tax Act*, *Canada Pension Plan*, *Unemployment Insurance Act*, *Employment Insurance Act*, or a regulation made under those Acts.
- Interest – any interest payable under a provision of the *Excise Tax Act*, *Income Tax Act*, *Canada Pension Plan*, *Unemployment Insurance Act*, and *Employment Insurance Act* on an amount referred to in any of the above paragraphs.
- Large corporations – for income tax purposes only, where a large corporation as defined in subsection 225.1(8) of the *Income Tax Act* has been assessed, we may take action to collect half of the amount assessed at any time during the first 90 days after the amount is assessed, regardless of whether an objection or appeal has been filed. After this 90-day period, if there is no objection or appeal, we can collect the outstanding balance. After the 90-day period, where an objection or appeal is filed, we can collect up to half of the amount under dispute and any balance not in dispute.

In addition, the collection restrictions, outlined in section 7 of this circular, do not apply if collection of all or part of an assessed amount would be jeopardized if there were a delay in collecting it. Section 12 of this circular, “Special provisions,” discusses collections in jeopardy.

9. Objections and appeals

If you do not agree with an income tax assessment, you can file an objection by either writing a letter or by completing Form T400A, *Objection – Income Tax Act*, and sending it to the Assistant Director, Appeals, in your tax services office or tax centre.

To file an objection to a CPP or EI assessment for the premiums that we indicate you owe, either write a letter or complete Form CPT100, *Appeal Under the Canada Pension Plan and/or Employment Insurance Act*, and send it to the Assistant Director, Appeals, in your tax services office.

If you do not agree with a GST/HST assessment or determination under Part IX of the *Excise Tax Act*, you can file an objection by completing Form GST159, *Notice of Objection (GST/HST)*, and sending it to the Assistant Director, Appeals, of your tax services office. Form E413, *Notice of Objection (Excise Tax Act)*, must be used for objections to other taxes assessed under the *Excise Tax Act*.

The time limit for individuals (other than trusts) and testamentary trusts to object to income tax assessments is the later of the following two dates: one year from the return's filing due date or 90 days after the date of the mailing of the assessment or reassessment notice.

The time limit to object to an income tax assessment in all other cases and to an assessment made under the *Excise Tax Act* (including GST/HST) is 90 days after the date of mailing of the *Notice of Assessment*, *Notice of Reassessment*, *Notice of Determination*, or *Notice of Re-determination*.

Under the *Income Tax Act* and the *Excise Tax Act*, you may request in writing an extension of time to file an objection. You can get more information from your tax services office.

For income tax purposes:

- When you file an income tax objection, we normally do not take any legal action on the disputed balance until 90 days after the date the Appeals Division mails a notice confirming or varying the assessment under objection. If you appeal the decision to the Tax Court of Canada, we do not normally take any legal action until the court mails its decision or you discontinue the appeal. (See section 8 of this circular for exceptions.)
- If the court dismisses your appeal or you discontinue it, we will ask you to immediately pay the full amount owing regardless of any further rights of appeal or judicial review you may have or wish to exercise. If you do not pay or provide acceptable security, we may initiate legal action to collect the debt. However, we will refund to you what you have paid on disputed amounts for which you have been successful in subsequent appeals, with applicable interest. (See section 5 of this circular, "Acceptance of security.")
- If you file an income tax objection or appeal to the Tax Court of Canada or the Federal Court of Appeal, and you agree in writing to delay proceedings until judgment has been given in a similar action before the Tax Court of Canada, Federal Court of Appeal, or the Supreme Court of Canada, we cannot take legal action until we notify you in writing of the Court's decision.
- When a large corporation, as defined in subsection 225.1(8) of the *Income Tax Act*, has been assessed, we may take action to collect under subsection 225.1(7) of the *Income Tax Act* half of the amount assessed at any time during the first 90 days after the amount is assessed, regardless of whether the

assessment is under dispute. Where an objection or appeal is filed, we can collect up to half of the amount under dispute and any balance not in dispute.

- When an assessed amount is under dispute and a delay would jeopardize its collection, there are provisions to permit us to take immediate collection action. (See section 12 of this circular, "Special provisions.")

Interest under both the *Income Tax Act* and the *Excise Tax Act* is charged at the prescribed rate on all amounts owing, regardless of whether they are disputed or not. Under Part IX (GST/HST) of the *Excise Tax Act*, penalties will also be charged on any outstanding balance.

We can take action to collect amounts owed as a result of assessments listed in section 8 of this circular **even if you file an objection or an appeal**.

10. Repayment of disputed amounts

If the Appeals Division has not confirmed or varied an income tax assessment within 120 days of the date a notice of objection is served, you can apply in writing for the return of all amounts paid with respect to amounts in dispute, or the release of any security provided for the tax in dispute. A disputed amount may include taxes, interest, penalties, or other amounts payable.

Similarly, if you appeal an income tax assessment to the Tax Court of Canada, you can request the return of any disputed amount which has been paid, or the return of any security provided for the amount in dispute. This does not apply to security provided or amounts paid by non-resident persons for amounts in dispute regarding the disposition of particular types of taxable Canadian properties and Canadian resource properties.

A large corporation, within the meaning assigned by subsection 225.1(8) of the *Income Tax Act*, is entitled to a repayment or return of security of one half of the disputed amount.

However, if making a repayment or surrendering security could jeopardize collection of the disputed amount, we may apply for a judicial order to permit us to retain the payment or the security.

Under the *Excise Tax Act*, there is no requirement to reimburse any amount paid or return security pledged on a disputed assessment.

11. Refunds applied to other government debts

We can offset (apply against another government debt) your repayment or refund to Crown debts for which you are liable. However, we will not usually offset a refund against an outstanding amount, other than a deemed trust debt, if the amount owing is the subject of an objection or appeal on which neither CCRA's Appeals Division nor the Court has made a decision.

12. Special provisions

It is our policy to approach tax compliance consistently and responsibly. There are cases when we must use the enforcement provisions of the *Income Tax Act* or the *Excise Tax Act* because our ability to collect taxes has been, or is likely to be, defeated by the transfer, sale, loss, relocation, or other disposition of a person's assets.

a) Collection in jeopardy

When we have reasonable grounds to believe that the collection of all or part of an amount we have assessed would be jeopardized if there was a delay in collecting it, we can take action. Under the *Income Tax Act*, a judge of a superior court of a province or of the Federal Court of Canada can authorize us to take collection action at once. When we are granted such an authorization, you have the right to apply to a court for a judicial review of it. Since we are not restricted from taking collection action for payroll or other source deduction amounts, we do not have to apply to the courts before taking such action.

A similar provision is available under the *Excise Tax Act* for amounts other than Part IX (GST/HST) amounts, with the exception that the Minister of National Revenue or a delegated authority may approve the action. Since we are not restricted from taking collection action for GST/HST amounts, we do not have to apply to the courts before taking such action.

If we believe that you have left or are about to leave Canada, we can require you to immediately pay all amounts owed, whether or not due at the time. If you do not make the payment, we can seize your goods and chattels.

b) Property transfers

If you have an amount owing under the *Income Tax Act* or Part IX (GST/HST) of the *Excise Tax Act* for the tax year or reporting period in which you transfer property, or previous tax years or reporting periods, the following rules under section 160 of the *Income Tax Act* or section 325 of the *Excise Tax Act* apply.

Under the above conditions, if you transfer property to

- a spouse or a person who has since become your spouse,
- a person under 18 years of age, or
- a person with whom you were not dealing at arm's length,

the person to whom you transfer property becomes liable for the lesser of the amount you owe, or the excess of the fair market value of the property over the consideration given for the property.

These rules do not apply to a transfer of property between you and your spouse under a decree, order, or judgment of a competent tribunal, or under a written separation agreement where, at the time of transfer, you and your spouse were separated and living apart as a result of the breakdown of your marriage. For transfers

occurring after 1992, marriage includes a common-law relationship.

c) Prosecution for failing to file a return

If you fail to file a return as and when required under the *Income Tax Act* or Part IX (GST/HST) of the *Excise Tax Act*, you are guilty of an offence. If you are convicted, you are liable to a fine of between \$1,000 and \$25,000, or both a fine and imprisonment for up to 12 months. For failure to file returns other than GST/HST returns, the *Excise Tax Act* provides for a fine of between \$10 and \$100.

13. Amounts owing by estates of deceased persons

If a deceased person's estate has amounts payable or remittable, we will contact the executor or administrator of the estate and ask for payment of the outstanding amounts. If the executor or administrator does not comply, we may take legal action to collect the debt.

Before distributing the assets of an estate, the executor or administrator must get a clearance certificate from us. The certificate will state that all amounts assessed or liable to be assessed have been paid or secured by the estate.

If executors or administrators distribute some of the assets of the estate before they get a clearance certificate, they will be liable, to the extent of the value of the assets distributed, for any amounts that have not been paid or are assessed later. For more information, contact your tax services office.

(For greater detail, see publication T4011, *Preparing Returns for Deceased Persons*.)

14. Confidentiality

To preserve the right to confidentiality, we will only release your confidential information to your authorized representatives, or as the law authorizes us. It is our policy to confirm the identity and authorization of all parties concerned before we release confidential information. However, if it is necessary for us to take legal action, the legal documents will contain certain aspects of a person's tax liability, such as the amount and type of debt owed.

15. Trust funds

The collection restrictions outlined in section 7 of this circular do not apply to trust funds described in this section.

You are deemed to hold the following amounts in trust:

- amounts that are deducted from employees and other individuals for:
 - (i) income tax;
 - (ii) Canada Pension Plan (CPP) contributions;
 - (iii) Employment Insurance (EI) premiums; and
- amounts collected as or on account of GST/HST, less allowable input tax credits.

You have to send us these amounts as the legislation requires. You must also include the employer's portion of CPP and EI when remitting source deductions. For a GST/HST amount, you can deduct allowable input tax credits before remitting it.

If you do not comply with the legislation that applies, we will assess the amount owing and ask you to immediately pay the full balance, including interest and any penalties that apply.

If you do not pay the balance owing, we may, at the time we issue a *Notice of Assessment*, garnishee your sources of funds (including trade receivables, bank deposits, loans, advances, and other income), or we may begin to seize and sell assets. Any assets we seize will be sold by sheriff's auction, unless the account is promptly paid in full, including any costs resulting from this action.

We may hold the directors of a corporation jointly and severally liable if the corporation fails to deduct, withhold, or remit amounts deemed to be held in trust, and we are unable to collect from the corporation. In addition, the directors are jointly and severally liable, with the corporation, to pay any penalty or interest that has accrued or will accrue on outstanding amounts.

Once we have issued assessments against directors, we will not usually start legal action against them before 90 days have passed from the day we mail the *Notice of Assessment*, or while the assessments are under objection or appeal. When these limitations do not apply, we may without delay garnishee the personal income of the directors that have been held liable, or we may seize and sell their personal assets if they do not voluntarily remit the amounts the corporation failed to deduct or remit. For more information about the rights and obligations of directors of a corporation, contact your tax services office. Information Circular 89-2R, *Directors' Liability – Section 227.1 of the Income Tax Act and Section 323 of the Excise Tax Act*, also gives more information on this topic.

It is an offence to withhold amounts but fail to remit them to the Receiver General for Canada or willfully fail to pay, collect, or remit GST/HST, or net tax. Under the *Income Tax Act*, if convicted, you are liable to a fine of between \$1,000 and \$25,000, or both a fine and imprisonment for up to 12 months. Under the *Excise Tax Act*, if convicted, you are liable to a fine of \$1,000 plus 20% of the GST/HST or net tax that you should have paid, collected, or remitted, or both a fine and imprisonment for up to six months.

16. Customs

This section deals only with certain general aspects of the customs collection policy that applies to any duty, tax, fee, penalty, charge, or other amount owing to the Crown related to goods imported into Canada. These amounts may be owing under the *Customs Act*, *Customs Tariff*, *Excise Tax Act*, *Special Import Measures Act*, and/or related regulations, referred to as the applicable Acts. For further information on collection policy, contact your tax services office. For

information on any other customs issue, contact the nearest customs office.

Payment obligations

A person must present a complete entry document to customs for goods imported. Such a document includes declarations on the value for duty, origin, and tariff classification of those goods. The person must also pay any duties and taxes owing, or post security, when goods enter Canada. Customs will not release goods for which these amounts are not paid or secured at the time of arrival. More information about security can be found in Memorandum D17-1-5, *Importing Commercial Goods*.

When a person imports goods by posting security, that person is automatically granted periodic payment (release prior to payment privileges). A monthly statement (*Importer/Broker Account Statement*, Form K84) is generated on the second last business day of the month summarizing the total amount payable for transactions processed within the current billing period, which is between the 25th day of one month and the 24th day of the next. The monthly statement is issued to the account security holder and must be paid by the last business day of the month. A person may also make interim payments, which will be reflected on the monthly statement, as frequently as desired any time during the billing period. Failure to pay accounts may result in suspension of release prior to payment privileges and taking the "Release Prior to Payment" security to account. More information about the account settlement can be found in Memorandum D17-1-5, *Importing Commercial Goods*.

Reassessments

When we review a person's accounting document, we may re-determine the origin, tariff classification, or value for duty of the goods. As a result, the person may owe additional duties, taxes, or other charges such as interest back to the 31st day after the person should have paid the duties and taxes. The person must normally pay these amounts within 30 days of our decision. We use Form B2-1, *Canada Customs – Detailed Adjustment Statement*, to give notice of our decision.

Interest

Where authorized by the applicable Acts, we will charge daily compound interest at either the prescribed or specified rate, from the 31st day after the amount was owed to the Crown up to and including the day the amount owing is paid.

Where authorized by the *Special Import Measures Act*, we will charge simple monthly interest at the prescribed rate up to and including the day the amount owing to the Crown is paid. Under the *Special Import Measures Act*, any fraction of a month is considered to be a full month.

More information on interest provisions can be found in Memorandum D11-6-5, *Interest and Penalty Provisions: Determinations/Re-Determinations*,

Appraisals/Re-Appraisals and Duty Relief, or Memorandum D14-1-6, *Liability for Payment of Provisional Duty, Anti-dumping Duty and Countervailing Duty Under the Special Import Measures Act*.

Enforcement

When goods are not reported, or are reported falsely to customs, the *Customs Act* allows us to seize the goods. In cases where the goods are not available for seizure or are impractical to seize, section 124 of the *Customs Act* allows for the issuance of a *Notice of Ascertained Forfeiture*, assessing an amount of money in lieu of a seizure. A *Notice of Penalty Assessment* may also be issued under section 109.3 for a contravention of the *Customs Act*.

Any amount of money demanded in a *Notice of Ascertained Forfeiture* or a *Notice of Penalty Assessment* becomes payable on the day the notice is served on the person. That person is in default and subject to collection action unless, within 30 days after the date of service of the notice, the person pays the amount owing or requests a decision of the Minister under section 131 of the *Customs Act* (review by the Adjudications Division).

Collection

If a person does not pay any other amounts owing (i.e., other than those demanded in a *Notice of Ascertained Forfeiture* or in a *Notice of Penalty Assessment*) within 30 days of the date the amount was due, we will issue a *Notice of Arrears*. If payment is not made, the amount on the *Notice of Arrears* will be subject to collection action unless the person pays the amount owing, or where an appeal is available under section 144 of the *Customs Act*, appeals the notice. No appeal is available under section 144 for disputes with respect to tariff classification, origin, or value for duty.

Collection and legal action

Collection action may include telephone calls, visits, legal action, and set-offs against other amounts owing to you by us or by other departments of the federal government. We may suspend your importation privileges as well as take lien action against goods imported by or reported for exportation by you. These goods may be detained and sold to satisfy the amount demanded in the notice.

Section 145 of the *Customs Act* provides for the registration of a Certificate of default in the Federal Court of Canada for unpaid amounts. Once registered, the certificate has the same force and effect as a judgment obtained in a court. When the debt is certified, we will usually notify you by mail. If you still do not pay the amount, we may obtain a writ or memorial and seize property, and later have it advertised and sold by the sheriff. You must pay all reasonable costs and charges incurred to collect the amount certified, and are still liable for any remaining balance. All proceeds from the sale remaining after costs and charges are paid will be applied to the debt.

We will continue to detain and sell imported and exported goods or continue other legal proceedings against you, until

the amount owing to the Crown is paid in full, unless other acceptable payment arrangements are made to suspend these actions.

Collection restrictions

We cannot initiate the following types of collection and legal action until 30 days after the day a *Notice of Arrears*, *Notice of Ascertained Forfeiture*, or *Notice of Penalty Assessment* is sent (issued) or delivered by mail to the latest known address:

- sell detained goods under section 146 of the *Customs Act*;
- begin legal proceedings in court;
- certify the amount under section 145 of the *Customs Act*;
- garnishee a person's wages; and
- require the retention of an amount the federal government owes to a person by way of deduction or set-off under section 147 of the *Customs Act*.

Alternative payment arrangements

We will consider alternative payment arrangements when you have tried all reasonable ways of getting the necessary funds, either by borrowing or rearranging your financial affairs, and you still cannot pay the balance in full. In this situation, you should contact the Revenue Collections Division of your tax services office, or the office shown on the *Notice of Arrears*, to discuss a mutually satisfactory short-term payment arrangement based on your ability to pay.

When determining ability to pay, we will expect you to make a full disclosure and give tangible evidence of your income, expenses, assets, and liabilities. Collections officers may verify the information you provide before accepting an arrangement. However, if your debt stays outstanding with no mutually acceptable payment arrangement, we may take legal action such as garnisheeing your income (i.e., we may intercept funds payable to you) or directing a sheriff to seize and sell your assets.

If you cannot make a payment for your liability, we may allow you to defer payment until your financial situation improves. During that time any interest or penalty that apply will continue to accrue on the liability. There may be exceptional situations when we may consider waiving or canceling interest or penalties under the interest and penalty provisions.

Interest and penalty provisions

We may waive or cancel part or all interest or penalty charges payable under the *Customs Act* and the *Customs Tariff*. We may consider these actions when you are prevented from making a payment when due, or otherwise complying with the *Customs Act* or *Customs Tariff* because of circumstances beyond your control. Such circumstances include:

- natural or human-made disasters, such as flood or fire (which destroy the records of the importer);

- civil disturbances or disruptions in service, such as a postal strike; and
- death or incapacity of the person who is directly responsible for ensuring the importer's compliance.

We may also cancel or waive interest or penalty charges if such charges were mainly because of our own actions, such as:

- errors proven to have been committed by employees of the CCRA which resulted in incorrect information being supplied to the importer; and
- material published by the CCRA, directed to the importing public, which contained errors that resulted in the importer's actions giving rise to the interest or penalty.

It may also be appropriate to waive or cancel all or part of interest and penalty charges where there is an inability to pay beyond your control. For example:

- when collection action has been suspended due to an inability to pay; or
- when an importer is unable to conclude a reasonable payment arrangement because the interest charges absorb a significant portion of the payments.

In such cases, we may consider waiving interest and penalties, in whole or in part, for the period when payments start until the amounts owing are paid. However, the agreed payments have to be made on time.

You, or your authorized representative, can make a written request to the tax services office or the office shown on the *Notice of Arrears* for a waiver or cancellation of interest and/or penalties. More information about the guidelines for canceling and waiving interest and penalties can be found in Memorandum D11-6-5, *Interest and Penalty Provisions: Determinations/Re-Determinations, Appraisals/Re-Appraisals and Duty Relief*.

Under the *Special Import Measures Act*, there is no authority to cancel or waive any interest payable.

Disputes and appeals

Appeals of notices of arrears

Section 144 of the *Customs Act* provides that a person to whom a *Notice of Arrears* is sent or delivered under subsection 143(1) may appeal the notice up to 30 days after the notice is sent or delivered by way of an action in the Federal Court, if no appeal is or was available under section 67 or 68 of the *Customs Act*. This, therefore, excludes assessments resulting from CCRA decisions concerning the origin, tariff classification, or value for duty of imported goods.

Seizures and forfeitures appeal process

Where a contravention of the *Customs Act* has been alleged and a seizure made or a *Notice of Ascertained Forfeiture* or a *Notice of Penalty Assessment* issued, you may request a decision of the Minister under section 131 of the *Customs Act* (review by the Adjudications Division) within 30 days of the date of the seizure or the service of the notice.

Where you have requested a decision of the Minister and the decision rendered demands payment of an amount of money, you may within 90 days after being notified of the decision, appeal the CCRA decision by way of an action in the Federal Court. However, we will ask you to immediately pay the full amount owing or provide acceptable security regardless of any further rights of appeal you may have or wish to exercise. If you do not pay or provide acceptable security, we may initiate legal action to collect the debt. For more information on the appeal process or request for a CCRA review, write to the following address:

Adjudications Division
Appeals Branch
Canada Customs and Revenue Agency
Ottawa ON K1A 0L5

Disputes and appeals concerning origin, tariff classification, or value for duty

If you are not satisfied with a CCRA decision about the origin, tariff classification, or value for duty of goods (and its related assessment or reassessment), you may dispute that decision by filing Form B2, *Canada Customs – Adjustment Request*, within 90 days of that decision. Before doing so, you must pay any amounts owing or post security satisfactory to the Minister.

Since payment is due within 30 days of the CCRA decision, if you wish to file a dispute, you should take steps to avoid CCRA collection action if you are unable to file Form B2 within the payment period. You should advise the regional customs office prior to the expiry of the payment period of an intention to file a dispute and request that lien action be delayed.

More information about the dispute resolution process can be found in Memorandum D11-6-7, *Importers' Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*.

You may subsequently appeal a CCRA dispute decision with which you are not satisfied to the Canadian International Trade Tribunal up to 90 days after the date the notice of dispute decision was given. A further appeal is available to the Federal Court of Appeal on any question of law.

For more information on the CCRA dispute resolution process or your rights of appeal, contact the Trade Administration Services section of your regional customs office.

Appeals under the Special Import Measures Act

Under the *Special Import Measures Act*, an appeal will not be accepted unless the amounts owing are paid in full. For information on this appeal or request for a re-determination process, write to the following address:

Anti-dumping and Countervailing Directorate
Customs and Trade Administration Branch
Canada Customs and Revenue Agency
Ottawa ON K1A 0L5

More information can be found in Memorandum D14-1-3, *Procedures for Filing an Appeal or to Make a Request for Re-Determination of Goods Under the Special Import Measures Act*.

17. A final word

Our collection policies help us apply the law fairly. Our procedures are designed to allow us to consider each person's financial situation.

At the same time, we have an obligation to uniformly and fairly apply the provisions of the *Income Tax Act*, *Excise Tax Act*, *Excise Act*, *Customs Act*, *Customs Tariff*, *Special Import Measures Act*, and other acts and regulations, such as the *Canada Pension Plan* and the *Employment Insurance Act*, that we administer for other government departments. We have to ensure that all individuals, corporations, employers, licensees, registrants, importers/exporters, customs brokers, international travellers, and all other persons pay the required amount of tax, duties, fees, penalties, and other amounts owing to the Crown.

You can obtain copies of this information circular and other related forms and publications by calling or visiting the forms area of your tax services office. If you have access, you can also find similar information by accessing our Internet site at www.cca-adrc.gc.ca

If you have any comments or suggestions that would help us improve the information in this circular, we would like to hear from you. Please send your comments to:

Revenue Collections Directorate
Canada Customs and Revenue Agency
10th floor, Tower C
25 McArthur Road
Ottawa ON K1A 0L5

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