



CRA: DOING ITS BEST TO BE FAIR

Some years ago, Canada Revenue Agency (CRA) introduced the “Fairness Provisions” to the *Income Tax Act*. These provisions provide common-sense ways for CRA to assist taxpayers unable to meet their tax or duty obligations due to extraordinary circumstances.

In certain circumstances, these provisions give CRA the discretion to:

- cancel and waive penalties and interest;
- accept late-filed, amended, or revoked income tax elections (which would otherwise not be allowed);
- issue refunds beyond the normal three-year limit (for individuals and testamentary trusts only).

What Circumstances Might Allow Penalties and Interest to be Waived?

These provisions may generally be used to cause penalties and interest to be waived in two types of circumstances:

1. when the penalties and interest result from circumstances beyond a taxpayer’s control; and
2. when they result primarily from the actions of CRA.

The following are examples of such circumstances.

- 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
- Serious emotional or mental distress such as a death in the immediate family
- CRA processing delays that result in a situation where the taxpayer was not informed, within a reasonable time, that an amount was owing
- Material made available to the public by CRA, which contained errors that led the taxpayer to file returns or make payments based on incorrect information

- Incorrect advice given to the taxpayer by CRA, i.e., where the taxpayer is wrongly advised that no installment payments will be required for the current year
- Delays by CRA in providing information such that the taxpayer could not make the appropriate installment or arrears payments

When taxpayers cannot pay amounts owing, then all or part of the applicable interest owing may be waived in circumstances such as the following.

- When collection has been suspended due to an inability to pay caused by loss of employment and the taxpayer is experiencing financial hardship
- When reasonable payment arrangements may not be achieved because the interest charges absorb a significant portion of the payments

It is very important that a taxpayer recognize the opportunities that may be presented by these circumstances, because additional financial hardship can be avoided.

What Circumstances Might Allow a Refund Beyond the Normal Three-Year Limit?

In normal circumstances, a taxpayer may request a refund or tax reduction within three years of the date that his or her return was assessed or reassessed or within three years of the related taxation year.

Refunds or reductions in taxes that individuals or testamentary trusts may request include refundable tax credits such as the child tax benefit, federal sales tax credit, GST credit, or provincial tax credits.

For individuals and testamentary trusts only, there may be an opportunity to obtain a refund or tax reduction for years extending beyond the three-year limit, all the way back to 1985.

Such taxpayers may also make a request if they were unaware that a deduction or credit was available, such as the disability amount or equivalent-to-spouse amount.

For individuals and testamentary trusts only, there may be an opportunity to obtain a refund or tax reduction for years extending beyond the three-year limit, all the way back to 1985. CRA may issue a refund or reduce the amount owed, if it is satisfied that such a refund or reduction would have been made if the return or request had been filed on time and provided that the assessment would be correct by law and has not been previously allowed.

Are You a Candidate for a Fairness Application?

If any of the above circumstances seem to apply to a taxpayer's situation, then that person may be a candidate for making a fairness application. Once such an application is made, however, CRA would also consider the following questions.

- Does the taxpayer have a history of compliance with tax obligations?
- Did the taxpayer knowingly allow a balance to exist, on which interest has accrued?

- Did the taxpayer exercise reasonable care and has not been negligent?
- Has the taxpayer acted quickly to remedy any delay or omission?

The responses to these questions could impact the success of a fairness application.

How to Request Relief Under the Fairness Provisions

Taxpayers or their authorized representatives can make the request by writing to any Taxation centre. Taxpayers should provide the facts and reasons that support their request including, for penalties and interest, why the charges levied were primarily caused by factors beyond the taxpayer's control.

Other Recourse

If you are not satisfied with the outcome of a decision made under the Fairness Provisions, you can make a written request to the Director of your tax services office for a second review of the decision. The request should include the reasons for asking for a review and all the relevant facts and documentation. During the second review, a director, designated manager, or committee impartially reviews the original decision.

Should you feel that discretion was not properly exercised during the CRA's review of your request for relief, you can even apply to the Federal Court for a judicial review.

The Federal Court does not overturn CRA decisions because 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 so exercised, it refers the request back to the CRA for reconsideration.

Should you wish to pursue an application pursuant to the Fairness Provisions, we recommend that you consult your tax advisor to ensure your position is presented in the best possible way. ▲

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Letters



Dear Editor:

Just received the June [Summer] issue of *The Scrivener* (#2/Vol. 13). What a pleasure! I did not rest until I had read, after four hours, every page.

Although I retired a long time ago, I try to keep up to date with my notarial knowledge. That's why I study *The Scrivener* thoroughly.

About 30 years ago, The Society started its own publication, *The BC Notary Magazine*, which was mostly concerned with social news intended to increase the bonding of the members.

Its successor, *The Scrivener*, has now developed not only into a truly educational instrument but also into a networking bond with our legal friends, bankers, accountants, and other professionals who read, clip, and file *The Scrivener*.

I am proud to be a sometime contributor to this excellent publication.

Congratulations to you for a job well done.

Yours sincerely,
Bernard W. Hoeter
BC Notary: 1960 to 1993
Honorary Life Member of The Society