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## Application

¶ 1. This information circular consolidates and cancels information circulars IC 92-1, *Guidelines for Accepting Late, Amended or Revoked Elections*, IC 92-2, *Guidelines for the Cancellation and Waiver of Interest and Penalties*, and IC 92-3, *Guidelines for Refunds Beyond the Normal Three Year Period*, all dated March 18, 1992.

¶ 2. In this information circular, the term **taxpayer** includes an individual, an employer or a payer, a corporation, a partnership, a trust, an estate, and an organization, all of which can request relief from the Minister of National Revenue (Minister) to mitigate the strict application of certain provisions as a result of not satisfying various rules and obligations required under the *Income Tax Act*.

¶ 3. Unless otherwise specified, all legislative references in this information circular refer to the *Income Tax Act* (Act).

¶ 4. In this information circular, the terms **fairness provisions** and **fairness legislation** commonly used on the Canada Revenue Agency (CRA) Web site and in CRA publications have been replaced with the term **taxpayer relief provisions**.

## Introduction

¶ 5. This information circular provides information on the discretionary authority the Minister has under the Act to grant taxpayers relief in accordance with the legislative provisions described in ¶ 9. It also explains how a taxpayer makes a request for relief, including the proper information and documentation needed to support such a request, and outlines the administrative guidelines the CRA will follow in making a discretionary decision whether to grant or deny relief based on a taxpayer's situation.

¶ 6. These are only guidelines. They are not intended to be exhaustive, and are not meant to restrict the spirit or intent of the legislation.

¶ 7. This information circular is divided into five parts:

- |          |  |
|----------|--|
| Part I   | Legislation  |
| Part II  | Guidelines for the Cancellation or Waiver of Penalties and Interest                        |
| Part III | Guidelines for Accepting Late, Amended, or Revoked Elections                               |
| Part IV  | Guidelines for Refunds or Reduction in Amounts Payable Beyond the Normal Three-Year Period |
| Part V   | Rules and Procedures When Relief Is Granted or Denied                                      |

## Part I

### Legislation

¶ 8. The legislation gives the CRA the ability to administer the income tax system fairly and reasonably by helping taxpayers to resolve issues that arise through no fault of their own, and to allow for a common-sense approach in dealing with taxpayers who, because of personal misfortune or circumstances beyond their control, could not comply with a statutory requirement for income tax purposes.

### Taxpayer Relief Provisions

¶ 9. A taxpayer can ask for relief in accordance with the provisions of the Act listed in this paragraph. After consideration of the relevant facts and circumstances, a delegated official of the CRA (see ¶ 17) will decide whether it is appropriate to:

- waive or cancel penalties and interest under subsection 220(3.1);
- extend the filing-due date for making certain elections or grant permission to amend or revoke certain elections under subsection 220(3.2);
- authorize a refund to an individual (other than a trust) or a testamentary trust under paragraph 164(1.5)(a), even though an income tax return is filed outside the normal three-year period; or
- authorize a reassessment or redetermination for an individual (other than a trust) or a testamentary trust beyond the three-year normal reassessment period under subsection 152(4.2), where the adjustment would result in a refund or a reduction in an amount payable.

¶ 10. While paragraph 164(1.5)(a) and subsection 152(4.2) apply only to individuals (other than a trust) and testamentary trusts, subsections 220(3.1) and (3.2) apply to all taxpayers.

¶ 11. The Minister does not have to grant relief under the taxpayer relief provisions. Each request will be reviewed and decided on its own merit. If relief is denied or partly granted, the CRA will provide the taxpayer with an explanation of the reasons and factors for the decision.

### Limitation Period on Exercising Ministerial Discretion and Deadline to Apply for Relief

¶ 12. For requests or income tax returns filed on or after January 1, 2005, the Minister may grant relief for any tax year (or fiscal period in the case of a partnership) that ended within 10 years before the calendar year in which the taxpayer's request or income tax return is filed.

¶ 13. Due to this limitation, a taxpayer has 10 years from the end of the calendar year in which the tax year or fiscal period at issue ended to make a request to the CRA for relief. This limitation applies to each of the legislative provisions described in ¶ 9.

¶ 14. The 10-year limitation period rolls forward every January 1. For requests or income tax returns that are filed in the current calendar year, the Minister has no authority to:

- waive or cancel penalties and interest;
- accept a late, amended, or revoked income tax election; or
- issue a refund or adjustment beyond the normal three-year period;

where the request is for a tax year or fiscal period of the taxpayer that ended more than 10 years before the calendar year in which the request was made.

### **Examples**

- An initial request or income tax return filed during the 2007 calendar year must deal with an issue related to a taxpayer's 1997 and later tax years (or fiscal periods) to be eligible for relief.
- An initial request or income tax return filed on or after January 1, 2008, related to a taxpayer's 1997 and previous tax years (or fiscal periods) is not eligible for relief, since those tax years (or fiscal periods) are beyond the 10-year period. Only requests or returns filed for the 1998 and later tax years (or fiscal periods) are eligible for relief as of this date.
- The Minister has no authority to grant relief for the 1998 tax year (or fiscal period) unless the taxpayer has filed an initial request or income tax return for that year before January 1, 2009.

¶ 15. If an assessment or reassessment for a tax year is issued by the CRA in a later year, or if an objection or appeal filed by a taxpayer may take considerable time to resolve, the taxpayer should send in their request for any potential relief before the 10-year time limit for that tax year expires.

¶ 16. Unless an initial request or income tax return was filed before the 10-year limitation rule coming into effect on January 1, 2005, requests filed for the 1985 to 1994 tax years will not be accepted and refunds beyond the normal three-year period will not be issued. For any active requests made before January 1, 2005, the taxpayer relief provisions in ¶ 9 and the redress process described in ¶ 103 and ¶ 105 continue to apply for the taxpayer's 1985 to 1994 tax years.

### **Who Is Authorized to Make the Decision?**

¶ 17. Subsection 220(2.01) authorizes the Minister to delegate his/her powers and duties conferred in various provisions of the Act to designated officials within the CRA. The officials delegated to exercise the Minister's discretionary authority under the taxpayer relief provisions described in ¶ 9 are authorized through administrative delegation instruments. These instruments are available at <http://www.cra-arc.gc.ca/tax/technical/delegationofpowers/menu-e.html>.

¶ 18. These officials are authorized to conduct a review of a taxpayer's request for relief and to make a decision whether to grant, partly grant, or deny, the request. It is a general

administrative practice of the CRA for another CRA official, or a committee of CRA officials, to prepare a decision report for the delegated official's consideration, including a recommendation on whether or not granting relief is justified. The final decision and notification of the decision to the taxpayer rests with the delegated official.

## **Part II**

### **Guidelines for the Cancellation or Waiver of Penalties and Interest**

¶ 19. The information in Part II of this information circular deals with the Minister's discretion to allow relief from the application of the penalty and interest provisions of the Act. The Minister may also provide relief from interest amounts, and in some cases penalty amounts, if he or she is satisfied that a taxpayer has an inability to pay or suffers from financial hardship related to a debt owed to the CRA.

### **General**

¶ 20. Subsection 220(3.1) gives the Minister the discretionary authority to waive or cancel all or part of any penalty and interest otherwise payable by a taxpayer under the Act. The request must be made within the 10-year time limit described in ¶ 13.

¶ 21. The ability of the CRA to waive or cancel penalties and interest is not to be used by taxpayers as a way to arbitrarily reduce or settle their tax debt.

¶ 22. A **waiver** refers to penalties and interest otherwise payable by a taxpayer for which relief is granted by the CRA before these amounts are assessed or charged to the taxpayer. A **cancellation** refers to penalties and interest amounts that were assessed or charged to the taxpayer for which relief is granted by the CRA.

### **Circumstances Where Relief From Penalty and Interest May Be Warranted**

¶ 23. The Minister may grant relief from the application of penalty and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement at issue:

- (a) extraordinary circumstances
- (b) actions of the CRA
- (c) inability to pay or financial hardship

¶ 24. The Minister may also grant relief if a taxpayer's circumstances do not fall within the situations stated in ¶ 23.

### **Extraordinary Circumstances**

¶ 25. Penalties and interest may be waived or cancelled in whole or in part where they result from circumstances beyond a taxpayer's control. Extraordinary circumstances that may have prevented a taxpayer from making a payment when due, filing a return on time, or otherwise complying

with an obligation under the Act include, but are not limited to, the following examples:

- (a) natural or man-made disasters such as, flood or fire;
- (b) civil disturbances or disruptions in services, such as a postal strike;
- (c) a serious illness or accident; or
- (d) serious emotional or mental distress, such as death in the immediate family.

### **Actions of the CRA**

¶ 26. Penalties and interest may also be waived or cancelled if the penalty and interest arose primarily because of actions of the CRA, such as:

- (a) processing delays that result in the taxpayer not being informed, within a reasonable time, that an amount was owing;
- (b) errors in material available to the public, which led taxpayers to file returns or make payments based on incorrect information;
- (c) incorrect information provided to a taxpayer, such as in the case where the CRA wrongly advises a taxpayer that no instalment payments will be required for the current year;
- (d) errors in processing;
- (e) delays in providing information, such as when a taxpayer could not make the appropriate instalment or arrears payments because the necessary information was not available; or
- (f) undue delays in resolving an objection or an appeal, or in completing an audit.

### **Inability to Pay or Financial Hardship**

¶ 27. It may be appropriate, in circumstances where there is a confirmed inability to pay all amounts owing, to consider waiving or cancelling interest in whole or in part to enable taxpayers to pay their account. For example:

- (a) when collection had been suspended due to an inability to pay and substantial interest has accumulated or will accumulate;
- (b) when a taxpayer's demonstrated ability to pay requires an extended payment arrangement, consideration may be given to waiving all or part of the interest for the period from when payments start until the amounts owing are paid, as long as the agreed payments are made on time and compliance with the Act is maintained; or
- (c) when payment of the accumulated interest would cause a prolonged inability to provide basic necessities (financial hardship) such as food, medical help, transportation, or shelter, consideration may be given to cancelling all or part of the total accumulated interest.

¶ 28. Consideration would not generally be given to cancelling a penalty based on an inability to pay or financial hardship unless an extraordinary circumstance, as described

in ¶ 25 has prevented compliance. However, there may be exceptional situations that may give rise to cancelling penalties, in whole or in part. For example, when a business is experiencing extreme financial difficulty, and enforcement of such penalties would jeopardize the continuity of its operations, the jobs of the employees, and the welfare of the community as a whole, consideration may be given to providing relief of the penalties.

### ***Making a Request***

¶ 29. Taxpayers or their authorized representatives can make their requests in writing and send them to the tax centre where they file their returns or to the tax services office serving their area. Alternatively, Form RC4288, *Request for Taxpayer Relief*, can be used to make a request. A copy of this form is available from the CRA Web site at <http://www.cra-arc.gc.ca/formspubs/menu-e.html> or by telephone at 1-800-959-2221.

¶ 30. Taxpayer requests on the basis of inability to pay or financial hardship should be sent to the taxpayer's tax services office.

¶ 31. For addresses and telephone numbers of CRA offices, see the listings in the government section of telephone books and on the "Contact us" page of the CRA Web site at [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca).

¶ 32. Taxpayers should include all the circumstances (as listed in ¶ 23) that they intend to rely on in their initial request. It is important that taxpayers provide the CRA with a complete and accurate description of their circumstances to explain why their situation should merit relief. To support a request, taxpayers should provide all relevant information including the following, where applicable:

- (a) the name, address, telephone number, social insurance number, account number, partnership number, trust account number, and business number or any other identification tax number assigned by the CRA to the taxpayer;
- (b) the tax year(s) or fiscal period(s) involved;
- (c) the facts and reasons supporting that the interest or penalties were either mainly caused by factors beyond the taxpayer's control, or were as a result of actions of the CRA;
- (d) an explanation of how the circumstances affected the taxpayer's ability in meeting their tax obligation;
- (e) the facts and reasons supporting the taxpayer's inability to pay the interest or penalties levied, or to be levied;
- (f) any relevant documentation such as death certificates, doctor's statements, or insurance statements to support the facts and reasons;
- (g) in cases involving financial hardship (inability to pay), a meaningful payment arrangement which covers at least the tax and the penalty part, if applicable, and full financial disclosure including a statement of income and expenses, as well as a statement of assets and liabilities;

- (h) supporting details of incorrect information given by the CRA in the form of written answers, published information, or other objective evidence;
- (i) where incorrect information given by the CRA is of an oral nature, the taxpayer should give all possible details they have documented, such as date, time, name of the CRA official spoken to, and details of the conversation; and
- (j) a complete history of events including what measures were taken (e.g., payments and payment arrangements) and when they were taken to resolve the non-compliance.

### ***Factors Used in Arriving at the Decision***

¶ 33. Where circumstances beyond a taxpayer's control, actions of the CRA, or inability to pay or financial hardship has prevented the taxpayer from complying with the Act, the following factors will be considered when determining whether or not the CRA will cancel or waive penalties and interest:

- (a) whether or not the taxpayer has a history of compliance with tax obligations;
- (b) whether or not the taxpayer has knowingly allowed a balance to exist on which arrears interest has accrued;
- (c) whether or not the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under the self-assessment system; and
- (d) whether or not the taxpayer has acted quickly to remedy any delay or omission.

### ***Special Consideration Due to Extraordinary Events***

¶ 34. When an extraordinary event (e.g., natural disaster) has prevented a large number of taxpayers from meeting their tax obligations, the Minister may issue a news release to announce that special consideration will be given to providing relief, such as a waiver or cancellation of penalty and interest charges on late tax remittances or late filing of a return. In such cases, taxpayers need to make a request to get relief. CRA news releases on extraordinary events that qualify for relief can be found at <http://www.cra-arc.gc.ca/newsroom/releases/menu-e.html>.

### ***Third-Party Actions***

¶ 35. Taxpayers are generally considered to be responsible for errors made by third parties acting on their behalf for income tax matters. A third party who receives a fee and gives incorrect advice, or makes arithmetic or accounting errors, is usually regarded as being responsible to their client for any penalty and interest charges that the client has because of the party's action. However, there may be exceptional situations, where it may be appropriate to provide relief to taxpayers because of third-party errors or delays.

¶ 36. It may be appropriate to consider granting relief from penalties and interest, in whole or in part, where an extraordinary circumstance beyond the control of a taxpayer's representative or actions of the CRA (as described in ¶ 25 and ¶ 26) have prevented the taxpayer from complying with an obligation or requirement under the Act.

### ***Gross Negligence Penalties***

¶ 37. Relief from a gross negligence penalty assessed under the Act can be considered under subsection 220(3.1). However, since the levy of these penalties indicates a degree of negligence and absence of care and diligence on the part of the taxpayer in the conduct of their tax affairs, the cancellation of a gross negligence penalty may be appropriate only in exceptional circumstances.

¶ 38. Given the nature of a gross negligence penalty, it is more appropriate for a taxpayer to dispute the assessment of such a penalty by filing a notice of objection. For more information on a taxpayer's right of objection, see Pamphlet P148, *Resolving Your Dispute: Objection and Appeal Rights Under the Income Tax Act* on the CRA Web site.

### ***Accrual of Arrears Interest***

¶ 39. Arrears interest that has accumulated on an outstanding balance during a calendar year that is within the 10 preceding calendar years, but relates to a liability that arose for a tax year or fiscal period beyond the 10-year limit (described in ¶ 12), is not eligible for relief. For example, a request made in the 2007 calendar year for relief from arrears interest that accumulated over the 1997 to 2007 calendar years in regard to a tax amount owed for the 1996 tax year cannot be given consideration.

### ***Administrative Charge on Dishonoured Payments***

¶ 40. An administrative charge payable under the *Financial Administration Act* for a dishonoured payment made to the CRA before April 1, 2007 cannot be cancelled under subsection 220(3.1). However, this charge may be waived or reduced under the *Financial Administration Act* and *Interest and Administrative Charges Regulations* where circumstances beyond the taxpayer's control, including an error made by the financial institution resulted in the payment being dishonoured. Taxpayers or their authorized representatives can make their requests in writing and send them to the tax centre where they file their returns or to the tax services office serving their area.

### ***Employment Insurance Premiums and Canada Pension Plan Contributions***

¶ 41. The 10-year limit in ¶ 12 and the guidelines in this part also apply to penalties and interest provided for in the *Employment Insurance Act* and *Canada Pension Plan* regarding the collection and payment of premiums and contributions required to be made.

## ***Voluntary Disclosures Program***

¶ 42. The Voluntary Disclosures Program is a CRA initiative that gives taxpayers the opportunity to come forward and to correct inaccurate or incomplete information, or to disclose previously unreported information, without penalties or fear of prosecution. Taxpayers who are considered to have made a valid voluntary disclosure will have to pay the taxes owing and arrears interest, and the CRA will waive the penalties that would otherwise be imposed under the Act. Under this program, and on a case-by-case basis, the CRA may provide some relief on the amount of arrears interest outstanding, after it is determined that the taxpayer made a valid voluntary disclosure. For more details, see Information Circular 00-1R, *Voluntary Disclosures Program*.

¶ 43. Arrears interest payable on a valid voluntary disclosure may be cancelled or waived under subsection 220(3.1). For more details, see Part II in this information circular called “Guidelines for the Cancellation or Waiver of Penalties and Interest.”

## ***Goods and Services Tax/Harmonized Sales Tax***

¶ 44. Section 281.1 of the *Excise Tax Act* (ETA) gives the Minister the discretion to waive or cancel penalties and interest payable under section 280 of the ETA, and effective April 1, 2007, the failure-to-file penalty payable under section 280.1. For more details on requesting relief from penalties and interest regarding the goods and services tax/harmonized sales tax (GST/HST), see GST Memorandum G500-3-2-1, *Cancellation or Waiver of Penalties and Interest*.

## ***Part III***

### **Guidelines for Accepting Late, Amended, or Revoked Elections**

¶ 45. The Act and *Income Tax Regulations* contain many elections that give taxpayers the opportunity to decide on an alternative tax treatment in conducting their financial affairs for income tax purposes. Most elections do not have tax rules that permit a taxpayer to file an election once the prescribed time for making that election expires or that give the taxpayer the ability to modify or cancel an original election filed on time. The information in Part III of this information circular deals with the Minister’s discretion to allow a taxpayer the benefit of certain elections even though they missed the due date, and to permit a taxpayer to modify or cancel certain elections already filed.

### ***General***

¶ 46. Subsection 220(3.2) gives the Minister the discretionary authority to extend the statutory time for filing certain elections or to permit certain elections to be amended or revoked. The request must be made within the 10-year time limit described in ¶ 13.

## ***Prescribed Elections***

¶ 47. A request by a taxpayer to have a late or amended election accepted or to revoke an election is limited to the elective provisions of the Act and Regulations listed in section 600 of the Regulations. For the list of prescribed elections, see Appendix A at the end of this information circular.

¶ 48. A late, amended, or revoked election must be correct in law based on the relevant legislation in place for the applicable tax year to which the election applies.

¶ 49. When accepted by the CRA, a late or amended election will be considered to have been made at the time it was required to be made. For amended and revoked elections, the earlier election will be cancelled. To give effect to acceptance of a late, amended, or revoked election, the CRA will reassess the affected returns for the tax years in question even if the years are beyond the taxpayer’s normal reassessment period (i.e., statute-barred years).

¶ 50. Any assessments or reassessments resulting from the CRA’s acceptance of the request is subject to the general provisions concerning arrears interest charged on the balance owing.

## ***Penalty for Late, Amended, or Revoked Elections***

¶ 51. A taxpayer is liable to a penalty if the CRA accepts a late, amended, or revoked election. The penalty, calculated under subsection 220(3.5), is whichever amount is less:

- (a) \$8,000; or
- (b) \$100 for each complete month from the election’s original due date to the date the application was made in a form satisfactory to the CRA.

¶ 52. The date on which the request (application) was made in a satisfactory form to the CRA is when the CRA has been provided with complete and accurate information for the election under review. To minimize the amount of penalty, the taxpayer should satisfy the application procedures described in ¶s 58 through 63.

¶ 53. It is CRA policy not to accept late, amended, or revoked elections, or to process the necessary adjustments to give an election effect, unless the amount of the penalty described in ¶ 51 is paid. Taxpayers should remit the penalty amount with their request. The CRA will determine and assess any unpaid balance of the penalty, which the taxpayer must pay at once. Interest will be charged on the unpaid balance of the penalty from the date of the *Notice of Assessment* to the date of payment.

¶ 54. The penalty described in ¶ 51 is subject to the provisions of subsection 220(3.1). For details on the cancellation or waiver of this penalty, see Part II in this information circular called “Guidelines for the Cancellation or Waiver of Penalties and Interest.”

### ***Deemed Prescribed Elections***

¶ 55. The rules and guidelines under this part also apply to the following designations and allocations that are considered prescribed elections, under subsection 220(3.21):

- (a) Paragraph 80(2)(i) of the Act allows a taxpayer to designate the order in which commercial debt obligations settled at the same time are to be applied for the purpose of the debt forgiveness rules.
- (b) Subsections 80(5) to 80(11) allow a taxpayer who has designated a forgiven amount to apply any remaining part of the forgiven amount in certain circumstances.
- (c) Subsection 80.03(7) allows a taxpayer to designate a capital gain that would otherwise arise under subsection 80.03(2) as a forgiven amount for the purpose of the debt forgiveness rules.
- (d) Subsection 132.11(6) allows a mutual fund trust, as well as any electing trust with a December 15 year-end, to choose an amount designated by it for a tax year to be added in computing its income for the year.

### ***Acceptance of a Late, Amended, or Revoked Election***

¶ 56. A request may be accepted in the following situations:

- (a) There have been tax consequences not intended by the taxpayer, and there is evidence that the taxpayer took reasonable steps to comply with the law. This could include, for example, the situation where the taxpayer obtained a bona fide valuation for a property, but after the CRA's review the valuation was found to be not correct.
- (b) The request arises from circumstances that were beyond the taxpayer's control. Such extraordinary circumstances could include natural or man-made disasters such as flood or fire; civil disturbances or disruptions in services, such as a postal strike; a serious illness or accident; or serious emotional or mental distress, such as death in the immediate family.
- (c) It is evident that the taxpayer acted on incorrect information given by the CRA. This could include incorrect written replies to queries and errors in CRA publications.
- (d) The request results from what is a mechanical error. This could include using the net book value amount when obviously the taxpayer intended to use the undepreciated capital cost or using an incorrect cost.
- (e) The later accounting of the transactions by all parties is as if the election had been made, or had been made in a particular manner.
- (f) The taxpayer can demonstrate that they were not aware of the election provision, even though they took a reasonable amount of care to comply with the law, and took remedial action as quickly as possible.

### ***Denial of a Late, Amended, or Revoked Election***

¶ 57. A request will not be accepted in the following instances:

- (a) It is reasonable to conclude that the taxpayer made the request for retroactive tax planning purposes. This could include taking advantage of changes to the law enacted after the due date of the election.
- (b) Adequate records do not exist.
- (c) It is reasonable to conclude that the taxpayer had to make the request because he or she was negligent or careless in complying with the law.

### ***Making a Request***

¶ 58. Taxpayers or their authorized representatives can make their requests in writing and send them to the tax centre where they file their returns or to the tax services office serving their area. Alternatively, Form RC4288, *Request for Taxpayer Relief*, can be used to make a request. A copy of this form is available from the CRA Web site at <http://www.cra-arc.gc.ca/formspubs/menu-e.html> or by telephone at 1-800-959-2221. To find the addresses and telephone numbers of CRA offices, see ¶ 31.

¶ 59. To support a request, taxpayers should provide all relevant information including the following, where applicable:

- (a) the name, address, telephone number, social insurance number, partnership number, trust account number, and business number or any other identification tax number assigned by the CRA to the taxpayer;
- (b) the tax year(s) or fiscal period(s) involved;
- (c) the dates and details of the transactions;
- (d) the date and details of the original election, including an explanation of why the taxpayer is asking to have an election amended or revoked; and
- (e) details of a late election, and an explanation of why it is late.

¶ 60. For a request to accept a late or amended election, the election needs to be made in the appropriate manner required by the specific provisions of the Act concerning that election (e.g., filing the election in prescribed form or in a prescribed manner).

¶ 61. The request should briefly describe the income tax implications of the acceptance or refusal of the request for all the parties involved.

¶ 62. If accepting the request involves changes to continuing tax account balances, taxpayers should submit appropriate revised schedules reflecting these changes. This could include, for example, capital cost allowance schedules, reserve account schedules, and Canadian exploration or development expense account schedules.

¶ 63. When the request involves more than one taxpayer, an agreement, signed by all parties, to the changes requested should be included with the request.

## **Part IV**

### **Guidelines for Refunds or Reduction in Amounts Payable Beyond the Normal Three-Year Period**

¶ 64. The Act sets a three-year limitation period from the end of the tax year of an individual (other than a trust) and testamentary trust to file an income tax return to claim a tax refund and a three-year limitation period from the date of the original *Notice of Assessment* to ask for an adjustment to an assessment issued for a previous tax year. The information in Part IV of this information circular deals with the Minister's discretion to relieve an individual (other than a trust) and a testamentary trust from the limitation period and, in certain circumstances, to accept late requests to give the individual or testamentary trust a refund or reduction in tax.

#### **General**

¶ 65. The relief provided under paragraph 164(1.5)(a) and subsection 152(4.2) applies only to individuals (other than trusts) and testamentary trusts.

#### **Refund Entitlement**

¶ 66. Subsection 164(1) restricts the CRA from refunding an overpayment of tax unless:

- (a) an income tax return was filed within three years from the end of the tax year; or
- (b) the CRA received a request for a refund within three years from the date of the original *Notice of Assessment* and the related income tax return was filed within three years from the end of the tax year. This is referred to as the normal reassessment period.

#### **Discretion to Allow a Statute-Barred Refund**

¶ 67. However, paragraph 164(1.5)(a) gives the Minister the discretionary authority to refund to an individual or a testamentary trust all or any part of an overpayment of tax for a tax year even if the tax return was filed later than three years from the end of the tax year. The request must be made within the 10-year time limit described in ¶ 13.

#### **Reassessment or Redetermination**

¶ 68. Subsection 152(4) generally restricts the CRA from reassessing a return of income for a tax year that is beyond three years from the date of the original *Notice of Assessment* or of an original notification that no tax was payable for the year. When the normal three-year reassessment period for a tax year ends, the return is considered statute-barred.

### **Discretion to Refund or Reduce Tax Payable for a Statute-Barred Return**

¶ 69. However, subsection 152(4.2) gives the Minister the discretionary authority to make a reassessment or a redetermination beyond the normal reassessment period for a statute-barred tax year, when requested by an individual or a testamentary trust in order to determine a refund or to reduce tax payable. The request must be made within the 10-year time limit described in ¶ 13.

¶ 70. An individual or testamentary trust, as the case may be, can ask the CRA to redetermine certain amounts that are considered either as payments on account of tax or overpayment of tax under the Act. Paragraph 152(4.2)(b) refers to the following amounts for which a redetermination could be issued:

- (a) refundable Quebec abatement for income earned in Quebec by an individual resident of Quebec under subsection 120(2);
- (b) refundable First Nations abatement for individuals who are subject to income tax legislation of certain First Nations under subsection 120(2.2);
- (c) goods and services tax/harmonized sales tax (GST/HST) credit available to eligible individuals under subsection 122.5(3);
- (d) refundable medical expense supplement available to eligible individuals under subsection 122.51(2);
- (e) refundable investment tax credit available to taxpayers under subsection 127.1(1);
- (f) the tax credit that a beneficiary of a mining reclamation trust can claim under subsection 127.41(3);
- (g) the tax credit that certain beneficiaries can claim under subsection 210.2(3) for the Part XII.2 tax paid by a trust;
- (h) the tax credit a Canadian partnership flows through to its partners for the Part XII.2 tax paid by a trust under subsection 210.2(4); and
- (i) Canada Child Tax Benefit (CCTB) payments available to eligible individuals for qualified dependants under subsection 122.61(1).

#### **Acceptance of a Refund or Adjustment Request**

¶ 71. The 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 or made on time, and provided that the necessary assessment is correct in law and has not been already allowed.

¶ 72. Individuals and testamentary trusts can make a request if they were not aware of, or missed, claiming a deduction or a non-refundable tax credit that was available for the year, such as child care expenses or the amount for an eligible dependant. Individuals can also ask for refunds or reductions of amounts owing for refundable tax credits such as provincial tax credits that have not been claimed. In



addition, payroll deductions may have resulted in an overpayment of taxes for which a refund can be requested.

¶ 73. The purpose for requesting an adjustment under subsection 152(4.2) is not to dispute or disagree on the correctness or validity of a previous assessment. The ability of the CRA to allow an adjustment to amounts for a statute-barred tax year should not be used as a means to have issues reconsidered, such as an audit reassessment, where the individual or testamentary trust chose not to challenge the issues through the normal objection/appeals processes or where the issues were already dealt with under the objection/appeal. For more information on a taxpayer's right of objection, see Pamphlet P148, *Resolving Your Dispute: Objection and Appeal Rights Under the Income Tax Act*, on the CRA Web site.

¶ 74. The CRA will generally not accept a request for an adjustment to a statute-barred tax year of an individual where the adjustment would result in the increase of taxes, interest, or penalties to the returns of other individuals that are statute-barred and cannot be reassessed by the CRA.

### ***Making a Request***

¶ 75. Individuals and testamentary trusts, or their authorized representatives, can apply for a refund from a statute-barred tax year by filing the income tax return(s) together with documentation or explanations to support their claim(s). If the returns were previously filed, they can make a written request.

¶ 76. To ask for a refund or a reduction of amounts owing under subsection 152(4.2), individuals and testamentary trusts can make their requests in writing and include the following information:

- (a) the name, address, telephone number, social insurance number, and trust account number or any other identification tax number assigned by the CRA to the taxpayer;
- (b) the tax year(s) involved;
- (c) all relevant documents to support any claims being made; and
- (d) an explanation for the adjustment they are requesting.

¶ 77. Individuals and testamentary trusts, or their authorized representatives, can send returns, written requests, and supporting documentation to the tax centre where they file their returns or to the tax services office serving their area. Alternatively, Form RC4288, *Request for Taxpayer Relief*, can be used to make a request. A copy of this form is available from the CRA Web site at <http://www.cra-arc.gc.ca/formspubs/menu-e.html> or by telephone at 1-800-959-2221. To find the addresses and telephone numbers of CRA offices, see ¶ 31.

¶ 78. To support a return or a request for an adjustment, individuals and testamentary trusts should provide the following information, if relevant:

- (a) official receipts or certified true copies of receipts (e.g., tuition, registered retirement savings plan, or charitable donation receipts);
- (b) copies of information slips (e.g., T3, T4, T5);
- (c) details or calculations of expenses or deductions being claimed; and
- (d) proof of payment, such as cancelled cheques for rental payments or a letter from a landlord.

¶ 79. If T4 information slips are relevant but are not available, individuals should provide a letter from their present or former employer(s), which states their income and deductions for the year. Otherwise, they should provide the full name and address of the present or former employer(s), as well as copies of pay stubs or cancelled cheques.

¶ 80. If other types of information slips are not available, an individual and testamentary trust should provide the name and address of the slip issuer and the amount on the slip.

¶ 81. If it is impossible to get the proper documentation, individuals and testamentary trusts should submit full details and a written explanation for consideration.

¶ 82. The CRA will try to reconstruct and validate the claim or claims by referring to CRA records.

¶ 83. If the CRA cannot validate a claim after referring to its records, a refund will not be issued.

### ***Provincial Benefits or Credits***

¶ 84. If there are time limitations to claim certain provincial benefits or credits (which are administered by the CRA for provinces) stipulated in a provincial act, subsection 152(4.2) and paragraph 164(1.5)(a) do not override provincial limitations, unless provincial law allows for it.

### ***Permissive Deductions***

¶ 85. The CRA will not process requests for adjustments if the requested decrease in tax is the result of an increased claim for capital cost allowance or other allowable deductions, where the taxpayer originally claimed less than the maximum amount allowed. For more information, see Information Circular 84-1, *Revision of Capital Cost Allowance Claims and Other Permissive Deductions*.

### ***Employment Insurance Premiums and Canada Pension Plan Contributions***

¶ 86. The relief described in ¶ 67 and ¶ 69 does not affect refunds for overpayments of Employment Insurance premiums and Canada Pension Plan contributions. The time limit for refunds remains at three and four years under the *Employment Insurance Act* and *Canada Pension Plan* respectively.

## ***Requests Based on a Court Decision or Other Resolution***

¶ 87. CRA policy does not allow for the reassessment of a statute-barred return if the request is made as a result of a court decision (for more information, see Information Circular 75-7R3, *Reassessment of a Return of Income*). Requests made to reassess a statute-barred return based only on the successful appeal by another taxpayer will not be granted under subsection 152(4.2).

¶ 88. Similarly, knowledge of another taxpayer's negotiated settlement to resolve an objection, or another taxpayer's consent to judgment on an appeal, will not be extended to permit a reassessment of a taxpayer's statute-barred return under subsection 152(4.2), if the taxpayer has chosen not to protect his or her right of objection or appeal.

## ***Part V***

### **Rules and Procedures When Relief is Granted or Denied**

¶ 89. Part V of this information circular deals with rules and procedures for interest paid on overpayments, issuing refunds, and the right of objection to an assessment or reassessment issued as a result of a decision made by the CRA to grant relief to a taxpayer. Part V also explains the recourse taxpayers have to ask for a second administrative review from the CRA or to have the Minister's decision reviewed by the Federal Court, when taxpayers do not agree with the Minister's decision for denying relief or partly granting relief.

### ***Reductions in Refunds***

¶ 90. Paragraph 164(1.5)(b) gives the Minister the discretion to refund an overpayment of tax that results from a reassessment or redetermination relating to:

- (a) an adjustment made beyond the normal reassessment period under subsection 152(4.2);
- (b) the cancellation of penalties and interest under subsection 220(3.1); or
- (c) the application of subsection 220(3.4) for the accepting of a late, amended, or revoked election under subsection 220(3.2).

¶ 91. Under certain circumstances, the CRA may reduce the amount of a refund to which an individual or testamentary trust might otherwise be entitled. For example, this may happen when a requested adjustment for a year beyond the normal reassessment period results in a refund for that particular year, but the adjustment would result in an increase of taxes, interest, or penalties for another year that is statute-barred. Under these circumstances, the CRA will usually grant a refund only if it is more than the taxes, interest, and penalties that would otherwise have been paid if the other year had not been statute-barred.

¶ 92. Similarly, if a redetermination of Canada Child Tax Benefit (CCTB) or goods and services tax/harmonized sales tax (GST/HST) credit requested by an individual results in a refund for the particular year, but would necessitate a redetermination to repay CCTB or GST/HST overpayments received for another year(s) which is statute-barred, the refund may be reduced accordingly.

### ***Refund Interest***

¶ 93. For requests received after June 30, 2003, subsection 164(3.2) provides for the payment of interest on a refund arising from a reassessment or redetermination that:

- cancels all or part of any penalty and interest previously paid; or
- reduces the amount of tax previously paid as a result of accepting an adjustment or a late, amended, or revoked election.

¶ 94. Compound daily interest at the prescribed rates will start to accumulate on the 31st day after a written request to waive or cancel penalty and interest, accept a late, amended, or revoked election, or to allow an adjustment beyond the normal three-year limit was received in a manner satisfactory to the CRA.

¶ 95. The date on which the request was received in a manner satisfactory to the CRA is the date when the CRA has been given complete and accurate information about the request under review. In certain circumstances, refund interest may begin later than the day stated in ¶ 94. For example, refund interest may begin on a later date if there was not enough documentation given to support the taxpayer's claim for an adjustment, or a new request is made for penalty and interest relief, which relies on different grounds than the previous request that was denied by the CRA. Taxpayers should satisfy the procedures described in this information circular in the section called "Making a Request."

¶ 96. Under subsection 164(3) and for the filing of a tax return for a tax year of an individual or testamentary trust that ended after June 30, 2003, refund interest on an overpayment will start to accumulate on the 31st day after the date the return was filed. For tax years that ended on or before June 30, 2003, refund interest will start on the 46th day after the date the return was filed.

¶ 97. There is no interest paid on a refund or part of a refund for GST/HST or CCTB payments made to an individual.

### ***Application of Refund to Other Debts***

¶ 98. Under subsection 164(2), the amount of any refund (except for CCTB payments) may be applied against any amount the taxpayer owes or is about to owe.

## ***Refund Withheld Until Outstanding Returns Are Filed***

¶ 99. Effective April 1, 2007, under subsection 164(2.01), a refund will not be paid to a taxpayer, applied to other debts, or used to set off amounts under the Act until such time as all outstanding returns that are required to be filed by the taxpayer under the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, and the *Excise Tax Act* have been filed with the CRA.

## ***Right of Objection***

¶ 100. If the Minister has waived or cancelled in whole or in part any penalties and interest under subsection 220(3.1) or has issued a *Notice of Reassessment* beyond the normal reassessment period under subsection 152(4.2), a taxpayer is prohibited under subsection 165(1.2) from filing an objection to dispute the assessment or reassessment.

¶ 101. If the Minister has accepted a late, amended, or revoked election under subsection 220(3.2), a taxpayer can file an objection under subsection 165(1.1) to dispute the assessment or reassessment made under subsection 220(3.4). However, objections are limited to matters that give rise to the assessment.

¶ 102. The normal objection procedures under subsection 165(1) apply to an individual (other than a trust) or testamentary trust for an original *Notice of Assessment* made to allow a refund from filing an income tax return beyond the normal three-year period. For more information on a taxpayer's right of objection, see Pamphlet P148, *Resolving Your Dispute: Objection and Appeal Rights Under the Income Tax Act*.

## ***Redress – Second Administrative Review***

¶ 103. If a request was denied or partly granted, there is no right of objection for a taxpayer to dispute a decision under the taxpayer relief provisions. However, if the taxpayer believes that the Minister's discretion has not been properly exercised, the taxpayer can write to ask that the director of the tax services office or the tax centre reconsider the original decision and review the situation again. During the second review, the taxpayer will have the opportunity to make more representations for the CRA's consideration. To find the addresses of CRA offices, see ¶ 31.

¶ 104. CRA officials not involved in the first administrative review and decision would carry out the second administrative review. They would prepare a decision report for the director or another delegated official for his or her consideration, including a recommendation on whether or not granting relief is justified. The final decision and notification of the decision to the taxpayer rests with the director or another delegated official, such as an assistant director.

## ***Redress – Judicial Review***

¶ 105. If a taxpayer believes that the Minister's discretion was not properly exercised, the taxpayer can apply for judicial review of that decision to the Federal Court under section 18.1 of the *Federal Courts Act*, within 30 days of the date the decision was first received by the taxpayer.

¶ 106. To ask for judicial review, the taxpayer must send a completed Form 301, *Notice of Application*, with the appropriate filing fee to the registrar of the Federal Court. For more information on how to file an application for judicial review or other general enquiries, contact the Courts Administration Service or see their Web site at <http://www.cas-satj.gc.ca>.

¶ 107. If it is determined that the Minister's discretion was not properly exercised, the Federal Court cannot substitute its decision for a decision of the CRA but can only refer the decision back to the CRA to be reconsidered by another delegated official.

¶ 108. As a general rule, taxpayers should ask for a second administrative review (described in ¶ 103) from the CRA before filing an application for judicial review with the Federal Court.

## ***Requests Made While an Objection or Appeal Is in Progress***

¶ 109. A request to cancel penalty and interest on the grounds of extraordinary circumstances or actions of the CRA for an assessment under objection or appeal may be reviewed and an informal decision may be communicated to the taxpayer. However, a final decision about the taxpayer's request for relief will be held until the objection or appeal is resolved or until all rights of appeal have expired.

¶ 110. A taxpayer's request to cancel penalty and interest on the grounds of inability to pay or financial hardship under subsection 220(3.1), for an adjustment under subsection 152(4.2), or to accept a late, amended, or revoked election under subsection 220(3.2) that relates to an assessment that is under objection or appeal will generally be held in abeyance until the outcome of the objection or appeal process or until all rights of appeal have expired.

## ***Comments***

¶ 111. If you have any comments about this information circular, please write to:

Taxpayer Relief and Service Complaints Directorate  
Canada Revenue Agency  
Ottawa ON K1A 0L5

## **Appendix A – List of prescribed elections**

Section 600 of the *Income Tax Regulations* lists the provisions of the *Income Tax Act* and *Income Tax Regulations* under which a taxpayer or a partnership can apply under subsection 220(3.2) of the Act to make a late or amended election, or to revoke an election.

The list of eligible elections reflects the amendments to section 600 that were registered in the *Canada Gazette*, Part II, on August 29, 2006, as SOR/2006-200.

Below is a list of the prescribed provisions, and a brief description of related elections:

### **Deferral on non-Canadian controlled private corporation employee options**

Subsection 7(8) of the Act allows an employee to defer the taxing of an employment benefit realized from a qualifying acquisition of a particular security under an agreement with the employer (or a person not dealing at arm's length with the employer) until the year in which the employee disposes of the security, becomes a non-resident of Canada or dies, whichever occurs first, if the employee elects in accordance with subsection 7(10) to have subsection 7(8) apply.

### **Deemed outlay or expense**

Paragraph 12(2.2)(b) of the Act allows a taxpayer to elect to reduce the amount of an outlay or expense (other than an outlay or expense which relates to the cost of the property) incurred in the year, the immediately following year or any preceding year, by all or part of any related government assistance received in the year which would otherwise be included in income by virtue of paragraph 12(1)(x).

### **Interest income accrual rules**

Former subsection 12.2(4) of the Act allowed an individual or a trust with individuals as beneficiaries to elect to report accrued interest income annually for certain life insurance policies and annuity contracts last acquired before December 20, 1980, rather than tri-annually under former subsection 12.2(3). Subsection 12.2(4) was repealed, after the introduction of mandatory annual reporting of accrued income on life insurance policies last acquired or materially altered after 1989.

### **Available-for-use rules on long-term projects**

Subsection 13(29) of the Act allows a taxpayer to elect to include an amount, within limits, as undepreciated capital cost for long-term project depreciable property under the available-for-use provisions of subsections 13(26) to 13(28), before the completion of the project.

### **Amounts paid for undertaking future obligations**

Subsection 20(24) of the Act allows a taxpayer to deduct from income certain payments made to obtain another person's agreement to undertake certain future obligations for which an amount was included in the taxpayer's income under paragraph 12(1)(a), if the taxpayer and the recipient jointly elect under subsection 20(25).

### **Cost of borrowed money**

The elections contained in section 21 of the Act allow a taxpayer to elect to capitalize, instead of deducting as a current expense, the cost of borrowed money used to acquire depreciable property (subsections 21(1) and 21(3)) or used for exploring, developing, or acquiring a resource property (subsections 21(2) and 21(4)).

### **Exchanges of property**

Subsections 13(4), 14(6), 44(1), and (6) of the Act allow a taxpayer to elect to defer an income inclusion or the recognition of a capital gain when a replacement property is acquired for a property that was stolen, expropriated, or destroyed, or for a former business property that was sold.

### **Adjustments to cost base**

Subsections 13(7.4) and 53(2.1) of the Act allow a taxpayer to elect to reduce the capital cost of depreciable property and the adjusted cost base of non-depreciable capital property, respectively, by the amount of any related inducement, refund, reimbursement, contribution, allowance, or other assistance that would otherwise be included in income under paragraph 12(1)(x).

### **Election where change of use**

Subsection 45(2) of the Act allows a taxpayer to elect to designate a property as his principal residence although there has been a change in use to an income producing property.

Subsection 45(3) of the Act allows a taxpayer to elect to defer a capital gain on the change of use of a property from an income producing property to a principal residence.

### **Debts established to be bad debts and shares of bankrupt corporation**

Subsection 50(1) of the Act applies to debts established to have become bad debts in a tax year and to certain shares, and allows a taxpayer to elect to have a deemed disposition at the end of the year and a reacquisition immediately thereafter at a cost of nil.

## **Successor rules for resource properties**

Paragraphs 66.7(7)(c), (d), and (e), and (8)(c), (d), and (e) of the Act allow a predecessor corporation and a successor corporation to elect to transfer the unused pools of resource expenses from the predecessor to the successor corporation.

## **Transfers or distributions to a taxpayer's spouse, common-law partner, or spousal/partner trust on the death of the taxpayer**

Subsection 70(6.2) of the Act allows a taxpayer's legal representative to elect to have the rollover rules under subsections 70(6) and 70(6.1) not to apply, thus causing the deemed disposition of assets at fair market value under subsection 70(5) and the deemed payment of amounts in NISA Fund No.2 under subsection 70(5.4).

## **Transfer of farm property, or family farm corporations and partnerships to a child**

Subsection 70(9) of the Act allows a taxpayer's legal representative to elect an amount, within limits, as proceeds of disposition for farm property that is transferred to a child on the taxpayer's death.

Subsection 70(9.1) of the Act allows a spousal or common-law partner trust to elect an amount, within limits, as proceeds of disposition for farm property that is transferred from the trust to a child on the spouse or common-law partner's death.

Subsection 70(9.2) of the Act allows a taxpayer's legal representative to elect an amount, within limits, as proceeds of disposition for a share in a family farm corporation, or an interest in a family farm partnership that is transferred to a child on the taxpayer's death.

Subsection 70(9.3) of the Act allows a spousal or common-law partner trust to elect an amount, within limits, as proceeds of disposition for a share in a family farm corporation, or an interest in a family farm partnership that is transferred from the trust to a child on the spouse or common-law partner's death.

## **Election by legal representative and transferee re reserves**

Subsection 72(2) of the Act lets a legal representative of a deceased taxpayer elect to claim a deduction for certain reserves, as long as the amount so deducted is then included in the income of the taxpayer's spouse or common-law partner or a spousal or common-law partner trust.

## **Inter vivos transfer of property**

Subsection 73(1) of the Act allows a taxpayer to elect to have the rollover provisions for an inter vivos transfer of assets to a spouse or common-law partner or certain trusts not to

apply, thus causing the assets to be considered to be transferred at fair market value for tax purposes.

## **Deemed settlement on winding-up**

Paragraph 80.01(4)(c) of the Act allows a parent corporation to elect to reduce the amount to which subsection 80(1) (debt forgiveness rules) might otherwise apply in cases where a debt owed between a parent corporation and its subsidiary is settled on the winding up of the subsidiary for less than both the principal amount and the cost amount of the debt.

## **Expropriation assets acquired as compensation for, or as consideration for sale of, foreign property taken by or sold to a foreign issuer**

Subsection 80.1(1) of the Act applies to a Canadian resident taxpayer who has acquired expropriation assets issued or guaranteed by a foreign government as compensation for the expropriated or forced sale of shares of a foreign affiliate, or foreign property used to carry on business in a foreign country. The election establishes the deemed cost of the expropriation assets and the deemed proceeds of disposition of the property that was expropriated or sold.

## **Dividends received by taxpayer's spouse or common-law partner**

Subsection 82(3) of the Act allows a taxpayer to elect to have a taxable dividend from a taxable Canadian corporation received by the taxpayer's spouse or common-law partner included in the taxpayer's income where such an inclusion increases the taxpayer's spouse or common-law partner credit under paragraph 118(1)(a).

## **Capital dividend**

Subsection 83(2) of the Act allows a private corporation to elect to have the full amount of a dividend that is payable by it to be treated as a capital dividend, which effectively allows those dividends to be paid on a tax-free basis.

## **Eligible distributions of foreign spin-off shares**

Paragraph 86.1(2)(f) of the Act allows a taxpayer to elect to defer the tax on eligible distributions of foreign spin-off shares.

## **Election to defer the 21-year deemed disposition date**

Subsection 104(5.3) of the Act allowed certain family trusts to elect to defer the 21-year deemed disposition date. This provision was ended with the result that the deferred disposition date is no later than January 1, 1999.

## **Preferred beneficiary election**

Subsection 104(14) of the Act allows a trust and its preferred beneficiaries to elect to have the income of the trust included in the income of the preferred beneficiaries, instead of being taxed in the trust.

## **No rollover on election by trust**

Subsection 107(2.001) of the Act allows a personal trust or prescribed trust resident in Canada at the time of the distribution to elect not to have the rollover in subsection 107(2) applied to a distribution of certain property to a beneficiary to satisfy the beneficiary's capital interest in the trust.

## **Deemed disposition on emigration**

Paragraph 128.1(4)(d) of the Act allows an individual (other than a trust) to elect to treat certain properties that would otherwise be exempt from the deemed disposition that occurs when the individual ceases to be resident in Canada as having been disposed of.

## **Departure tax adjustment for a returning former resident**

Paragraphs 128.1(6)(a) and 128.1(6)(c) of the Act apply to an individual (other than a trust) who ceases to be resident in Canada after October 1, 1996, and later returns to reside in Canada. The effect of the election is to unwind the deemed disposition under subsection 128.1(4) for certain properties still held on the individual's return to Canada.

## **Departure tax adjustment for a returning trust beneficiary**

Paragraphs 128.1(7)(d) and 128.1(7)(g) of the Act apply to an individual trust beneficiary (other than a trust) who ceases to be resident in Canada after October 1, 1996, receives a distribution of property from the trust while a non-resident, and later returns to reside in Canada while still owning the property. These rules allow the beneficiary and the trust to jointly elect, on the beneficiary's return to Canada, to unwind the deemed disposition under subsection 107(2.1), which was triggered when the trust distributed the property to the non-resident beneficiary.

## **Post-emigration loss on disposition**

Paragraph 128.1(8)(c) of the Act applies to an individual (other than a trust) who disposes of taxable Canadian property, after having ceased to be resident in Canada after October 1, 1996, for proceeds that are less than the deemed proceeds that arose on the deemed disposition on emigration under paragraph 128.1(4)(b) of the Act. The individual can elect to reduce the deemed proceeds of disposition that arose when the individual emigrated.

## **Allocation of income by communal organizations**

Subsection 143(2) of the Act allows a communal organization to elect to have its taxable income, earned by the deemed trust under subsection 143(1), allocated to members of the organization.

## **Home Buyers' Plan**

Subsection 146.01(7) of the Act allows a deceased taxpayer's legal representative and the surviving spouse or common-law partner to elect not to have the full outstanding balance of the Home Buyers' Plan included on the deceased taxpayer's final return. The practical effect of the election is to put the surviving spouse or common-law partner in the same position as the deceased taxpayer with respect to the balance outstanding.

## **Disposition of property by legal representative of deceased taxpayer**

Subsection 164(6) of the Act allows a deceased taxpayer's legal representative to elect to treat certain capital losses or terminal losses of the taxpayer's estate for its first tax year as capital losses or terminal losses of the deceased taxpayer for the year of death.

## **Realization of deceased employees' options**

Subsection 164(6.1) of the Act allows a deceased taxpayer's legal representative to elect to treat the amount of the loss realized on the exercise, disposition, or expiration of rights to acquire certain securities within the first tax year of the taxpayer's estate as a loss of the deceased taxpayer for the year of death.

## **Excess capital dividend**

Subsection 184(3) of the Act allows a corporation to elect to have the amount of the elected capital dividend in excess of the balance in the corporation's capital dividend account treated as a separate, taxable dividend, thereby avoiding the tax otherwise payable under Part III.

## **Date of acquisition of control**

Subsection 256(9) of the Act allows a corporation to elect not to have the acquisition of control deemed to occur at the start of the day on which the acquisition took place. If the corporation makes an election, the particular time of day that the acquisition of control took place will be recognized.

## **Elections to include properties in Class 1**

Subsection 1103(1) of the Regulations allows a taxpayer to elect, for capital cost allowance purposes, to include in Class 1 all properties included in Classes 2 to 10 and Classes 11 and 12.

**Elections to include properties in Class 2, 4, or 17**

Subsection 1103(2) of the Regulations allows a taxpayer to elect, for capital cost allowance purposes, to include in Class 2, 4, or 17, a property acquired before May 26, 1976, that would otherwise be included in another class when the chief depreciable properties of the taxpayer are included in Class 2, 4, or 17.

**Elections to make certain transfers**

Subsection 1103(2d) of the Regulations allows a taxpayer to elect to defer a capital cost allowance recapture by transferring the property disposed of to a new class of which the taxpayer has property, when the property disposed of would have been a property of the new class if it had been acquired when the property of the new class was acquired.

**Earnings of a foreign affiliate**

Subsection 5907(2.1) of the Regulations allows that, in calculating the active business earnings of a foreign affiliate, a corporation can make an election for the cost of a foreign resource property or the cost of a capital property.