



Penalties and Interest

Note: This memorandum of Chapter 16 supersedes GST Memorandum 500-3-2, *Penalties and Interest*, dated March 1994.

This memorandum explains the statutory penalties and the application of interest in accordance with the goods and services tax/harmonized sales tax (GST/HST) provisions of the *Excise Tax Act* (the Act).

Disclaimer The information in this memorandum does not replace the law found in the *Excise Tax Act* and its regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate regulation, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call 1-800-959-8287.

If you are located in Quebec, please contact Revenu Québec by calling 1-800-567-4692 or visit their Web site at www.revenu.gouv.qc.ca.

Note – HST Reference in this publication is made to supplies taxable at 5% (the rate of the goods and services tax or GST) or 13% (the rate of the harmonized sales tax or HST). The HST applies to supplies made in Nova Scotia, New Brunswick, and Newfoundland and Labrador (the “participating provinces”). If you are uncertain as to whether a supply is made in a participating province, you may refer to GST/HST Technical Information Bulletin B-078, *Place of Supply Rules Under the HST*.

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Application of penalty and interest under section 280

Before April 1, 2007

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| Penalty and interest payable before April 1, 2007 s 280 | 1. Section 280 imposes penalty and/or interest charges in situations where a person has failed to pay or remit an amount to the Receiver General as required under Part IX of the Act. On late or deficient payments due before April 1, 2007, interest is charged at the rate prescribed under the <i>Interest Rates (Excise Tax Act) Regulations</i> for that time period, and penalties are charged at a rate of 6% per year. |
| Compound interest s 124 | 2. Penalty computed at a rate per year and the interest computed at the prescribed rate are compounded daily. Where both penalty and interest are required to be compounded, the penalty rate and the interest rate are compounded together at a single rate equal to the total of the penalty rate and the interest rate.

3. Penalty and interest are compounded on the total of all amounts owing, including penalty and interest outstanding, and are required to be paid at the end of the day on which they are compounded. |
| Computing penalty and interest ss 280(1) | 4. Penalty and interest are computed for the period beginning on the first day following the day on or before which the amount was required to be remitted or paid and ending on the day the amount is remitted or paid. An amount is considered to have been remitted or paid when the Receiver General receives it. For example, if the net tax was remittable on January 31, penalty and interest would be computed beginning on February 1 and ending on the day the amount was remitted, both days inclusive. |
| Application of interest ss 124(3) | 5. Once a retroactive amendment to Part IX of the Act is enacted, interest is calculated retroactively on any resulting amount due. However, interest will not accrue before October 1992 on any amount payable or remittable by a person resulting from a retroactive amendment. |
| Example | An amendment changes the tax status of a supply from zero-rated to taxable at 6%. This amendment is enacted on February 1, 2007.
Effect:
If the effective date of the amendment was November 1, 2006, the interest would apply retroactively upon enactment to any amounts becoming due as if the amendment had been enacted before November 1, 2006. If the effective date were January 1, 1991, interest would not begin to accrue before October 1, 1992, on amounts becoming due. |
| Exception ss 124(4) | 6. While cases may arise where interest is computed retroactively, no penalty will be imposed retroactively as a result of an amendment to Part IX of the Act. |

After March 2007

New prescribed interest rate and elimination of 6% penalty ss 280(1)

7. Effective April 1, 2007, the penalty under section 280 was eliminated. Section 280 now imposes a new prescribed interest rate on late or deficient payments due on or after April 1, 2007. The *Interest Rates (Excise Tax Act) Regulations* have been amended so that the new prescribed interest rate charged on an overdue amount is the basic rate, plus 4%. The term “basic rate” is defined in the amended *Interest Rates (Excise Tax Act) Regulations* as the average rate charged on 90-day Treasury Bills rounded up to the nearest whole percentage (expressed as a percentage per year).

Payment of interest ss 280(4.1)

8. Interest is compounded on the total of all amounts outstanding, and is required to be paid at the end of the day on which it is compounded. If the interest is not paid by the end of that day, the interest is added to the amount outstanding at the end of that particular day.

Penalty and interest on instalments

Underpaid or late-paid instalments before April 1, 2007 ss 280(2)

9. Penalty and interest were imposed where a quarterly instalment due before April 1, 2007, was underpaid or paid late to the Receiver General. Where a person failed to pay all or any part of an instalment payable within the time specified in subsection 237(1) (i.e., within one month after the end of each fiscal quarter ending in the reporting period), the person was required to pay, on the amount of the instalment not paid,

- a penalty of 6% per year, and
- interest at the prescribed rate.

Calculating penalty and interest before April 1, 2007 ss 280(2)

10. The penalty of 6% per year and interest at the prescribed rate on the unpaid amount of an instalment were calculated for the period beginning on the first day following the day on which the amount is due and ending on the earlier of

- the day the total of the amount, penalty and interest is paid, and
- the day on or before which the tax on account of which the instalment is payable is required to be remitted (e.g., within three months after the end of the fiscal year).

Underpaid or late-paid instalments before April 1, 2007, and still outstanding after March 2007 ss 280(2)

11. If a person has failed to pay all or part of an instalment first payable before April 1, 2007, and this amount remains outstanding on or after that date, the person is required to pay:

- (a) the penalty of 6% per year and interest at the prescribed rate on the amount of the instalment not paid, computed for the period beginning on the first day following that time and ending on March 31, 2007; and
- (b) interest at the new prescribed rate on the total of the amount of the instalment that remains unpaid on March 31, 2007, plus the interest and penalty referred to in paragraph (a), computed for the period beginning on April 1, 2007, and ending on the earlier of
 - (i) the day the total of the amount, penalty and interest is paid, and
 - (ii) the day on or before which the tax on account of which the instalment was payable is required to be remitted.

Underpaid or late-paid instalments after March 2007
ss 280(2)

12. Interest charged at the new prescribed rate is imposed where a quarterly instalment, which is first due after March 2007, is underpaid or paid late to the Receiver General. Where a person fails to pay all or any part of an instalment payable within the time specified in subsection 237(1) (i.e., within one month after the end of each fiscal quarter ending in the reporting period), the person will be required to pay, on the amount of the instalment not paid, interest at the new prescribed rate.

Calculation of interest on underpaid or late paid instalments due after March 2007
ss 280(1)

13. Interest at the newly prescribed rate on the amount of the underpaid or late-paid instalment is calculated for the period beginning on the first day following the day on which the amount is due and ending on the earlier of:

- the day the total of the amount and interest is paid, and
- the day on or before which the tax on account of which the instalment was payable is required to be remitted.

Offset mechanism for instalments paid early, or overpaid
ss 280(3)

14. Prepaying or overpaying other instalments for the reporting period can reduce penalty and interest on late or deficient instalments.

Offset mechanism for underpaid or late-paid instalments due before April 1, 2007, for net tax remittable before April 1, 2007

15. The penalty of 6% per year and interest at the prescribed rate in respect of late or underpaid instalments are payable only to the extent that they exceed an amount of prescribed interest plus 6% per year calculated on overpaid or early remitted instalments.

Offset mechanism for underpaid or late-paid instalments due before April 1, 2007, for net tax remittable on or after April 1, 2007

16. If a person failed to pay all or part of an instalment that was required to be paid before April 1, 2007, and is required to remit the tax on account of which the instalment was payable, on or after April 1, 2007, the total new prescribed interest payable is limited to the amount by which the total of the penalty of 6% per year and interest at the prescribed rate that would be payable for the period if no amount were paid by the person on account of instalments payable in the period exceeds the total of the following amounts:

- interest at the prescribed rate plus 6% per year, calculated on a particular instalment of tax paid before April 1, 2007, for the period beginning on the day of that payment and ending on March 31, 2007;
- an amount of interest at the new prescribed rate that applies to interest payable to the Receiver General, calculated on that particular instalment of tax for the period beginning on April 1, 2007, and ending on the day on or before which the tax on account of which the particular instalment was payable is required to be remitted; and
- an amount of interest at the new prescribed rate that applies to interest payable to the Receiver General, calculated on an instalment of tax paid after March 31, 2007, for the period beginning on the day of that payment and ending on the day on or before which the tax on account of which the instalment was payable is required to be remitted.

Offset mechanism for reporting periods beginning on or after April 1, 2007

17. For reporting periods beginning on or after April 1, 2007, the total interest at the new prescribed rate charged on late or unpaid instalments will not exceed the interest at this rate calculated on an instalment of tax paid for the period beginning on the date of that payment and ending on the day the net tax on account of which the instalment was payable is required to be remitted.

Excess amount not refundable

18. Where the amount calculated on overpaid or early remitted instalments exceeds any penalty and interest payable, or interest at the new prescribed rate payable, the excess is not refundable and may not be applied to any other debt.

Unpaid interest and penalty
ss 280(4)

19. Penalty and interest amounts, which are outstanding on unpaid or deficient instalments on the day the tax on account of which the instalments were required to be remitted, are deemed to be amounts not remitted, and therefore are subject to penalty and interest (due before April 1, 2007), or interest at the new prescribed rate for late and deficient instalments first payable after March 2007, until paid.

Penalty and interest on the net tax of selected listed financial institutions

Interest and penalty due before April 1, 2007
ss 280(1.1)

20. A selected listed financial institution that fails to pay an amount of interim net tax for a reporting period within the time required will be required to pay a penalty of 6% per year and interest at the prescribed rate on the amount in default. The penalty and interest are computed from the time that the amount of interim net tax was required to be paid until the earlier of the day the amount, penalty and interest are paid and the day the financial institution is required to file the final return for that reporting period.

Interest and penalty due before April 1, 2007, and unpaid after March 2007
ss 280(1.1)

21. If a selected listed financial institution is required to pay an amount of interim net tax before April 1, 2007, but fails to pay it by that day, the penalty of 6% per year and interest at the prescribed rate apply to the period before April 2007, and interest at the new prescribed rate applies to the amount of interim net tax and the penalty and interest that remain unpaid after March 2007.

New prescribed Interest due and unpaid after March 2007
ss 280(1.1)

22. For any interim reporting period ending on or after April 1, 2007, a selected institution that is required to pay an amount of interim net tax, but fails to pay this interim net tax by the due date, will be subject to interest at the new prescribed rate on the unpaid amount calculated for the period beginning on the first day following the day on which the amount is due and ending on the earlier of

- the day the total of the amount and interest is paid, and
- the day on or before which the selected financial institution is required to file a final return, under subsection 238(2.1) for that reporting period.

Unpaid penalty and interest
ss 280(4.01)

23. Where a selected listed financial institution is required to pay the penalty of 6% per year and interest at the prescribed rate (due before April 1, 2007), or the interest at the new prescribed rate (due after March 2007), on an interim net tax payment for a reporting period, and the penalty and/or interest is not paid before the due date of its final return for the period, the penalty and interest, or the interest at the new prescribed rate, is deemed to be an amount of net tax not remitted. As a result, the penalty and/or interest continue to compound on these unpaid penalty and/or interest amounts (only interest after March 31) until paid.

Further information 24. For more information on the reporting and filing requirements of selected listed financial institutions, refer to guide RC4050, *GST/HST Information for Selected Listed Financial Institutions*.

Application of penalty under section 280.1

Failure to file a return s 280.1 25. Section 280.1 imposes a penalty where a person fails to file a return for a reporting period as and when required under Part IX of the Act. The amount of the penalty (referred to as a failure-to-file penalty) payable by the person is calculated using a two-part formula:

- Part (a) is calculated as 1% of the amount of net tax owing; and
- Part (b) is 25% of the amount in (a) for each complete month overdue, to a maximum of 12 months.

Effective date s 280.1 26. The failure-to-file penalty applies in respect of

- any return that is required to be filed on or after April 1, 2007, and
- any return that was required to be filed before April 1, 2007, but was not, in which case the day on or before which the return is required to be filed is deemed to be March 31, 2007, for purposes of calculating the penalty.

Minimum interest and penalty

Reporting periods ending before April 1, 2007 ss 280(6) 27. Where at any time a person pays or remits all amounts payable under the Act for a reporting period and, immediately before that time, the total of all penalties and interest payable by the person for that period is less than \$25, the Minister of National Revenue (the Minister) may write off and cancel the total of the penalties and interest.

Reporting periods ending after March 2007 s 280.2 28. If a person remits or pays all amounts payable under the Act for a reporting period, and the total of failure-to-file penalties under section 280.1 and interest for the period immediately before that time is less than \$25, the Minister may write off and cancel the penalties and interest.

Rate of interest on refunds and rebates

Interest Rate (Excise Tax Act) Regulations 29. The prescribed interest rate paid on GST/HST refunds and rebates prior to April 1, 2007 was determined by reference to the rate charged on 90-day Treasury Bills and adjusted quarterly. The *Interest Rate (Excise Tax Act) Regulations* have been amended so that, effective April 1, 2007, the prescribed interest rate paid on a GST/HST refund or on a GST/HST rebate is the basic rate, plus 2%. The term “basic rate” is defined in the amended *Interest Rate (Excise Tax Act) Regulations* as the average rate charged on 90-day Treasury Bills rounded up to the nearest whole percentage (expressed as a percentage per year). Information on all rates is available on the CRA Web site at All Rates.

Interest on refunds

- Interest on net tax refunds or refunds of overpayments for reporting periods ending before April 1, 2007 ss 229(3) and 230(3)
30. The Minister will pay interest on a net tax refund or on a refund of an overpayment of net tax for a reporting period that ends before April 1, 2007, beginning on the day that is 21 days after the later of
- the first day following the end of the reporting period to which the return pertains,
 - the day the return in which the refund is claimed is filed with the Minister, and
 - the day on which all returns for the reporting period and all preceding reporting periods have been filed with the Minister, and
- ending on the day the refund is paid.
- Interest on net tax refunds or refunds of overpayments for reporting periods ending after March 2007 ss 229(3) and 230(3)
31. The Minister will pay interest on a net tax refund or on a refund of an overpayment of net tax for a reporting period that ends after March 31, 2007, beginning on the day that is 30 days after the later of
- the day the return in which the refund is claimed is filed with the Minister, and
 - the day following the last day of the reporting period, and
- ending on the day the refund is paid.
- Refund on reassessment ss 296(6)
32. Where a person has paid an amount on account of tax, net tax, penalty, interest or other amount assessed under section 296, and the amount paid exceeds the amount determined on reassessment to have been payable or remittable by the person, the Minister will refund the amount of the excess, together with interest on the amount, for the period beginning on the day the amount was paid and ending on the day the refund is paid.
- Interest on cancelled amounts ss 296(6.1)
33. Beginning April 1, 2007, despite subsection 296(6), if a person has paid an amount of interest and/or penalty and the Minister cancels this amount under section 281.1, the Minister will refund the amount, together with interest on the amount, for the period beginning on the day that is 30 days after the day the Minister received the request, in a manner satisfactory to the Minister, to cancel the penalty and/or interest and ending on the day the refund is paid. See **paragraph 41** for more information on waiving or cancelling penalty and interest.

Interest on rebates

- Interest on rebates for claim periods ending before April 1, 2007, and for other rebate applications filed before April 1, 2007 ss 297(4)
34. If the Minister pays a rebate to a person, the Minister will pay interest at the prescribed rate for the period beginning on the day that is
- in the case of a rebate under sections 257, 258 or 259, 21 days; and
 - in any other case, 60 days
- after the day the application in which the rebate is claimed is filed with the Minister and ending on the day the rebate is paid.

Interest on rebates for claim periods ending after March 2007, and for other rebate applications filed after March 2007
ss 297(4)

35. Interest on a rebate will now be paid beginning 30 days after the day the application in which the rebate is claimed is filed with the Minister and ending on the day the rebate is paid. This applies to:

- any rebate under sections 259, 259.1 or 261.01, if the claim period for the rebate ends on or after April 1, 2007; and
- any other rebate, if the application in which the rebate is claimed is filed with the Minister on or after April 1, 2007.

Interest on employee and partner rebate

36. The interest provisions of the Act do not apply to employee and partner rebates under section 253. The interest provisions of the *Income Tax Act* apply to these rebates.

Minimum interest paid

ss 297.1(1) and (2),
229(4), 230(4) and 297(5)

37. Effective April 1, 2007, interest of \$2 or less is not paid on a rebate or refund. Before this date, interest of less than \$1 is not paid on a rebate or refund.

Dishonoured instruments

s 280.3

38. When a financial instrument (e.g., a cheque) that is used to pay an amount payable or remittable under Part IX of the Act becomes dishonoured after March 2007, the charge that becomes payable under the *Financial Administration Act* (FAA) in respect of that financial instrument is also deemed to be an amount payable under Part IX. By deeming this charge to be an amount payable under Part IX, the charge becomes subject to the interest and collection provisions under the Act. The interest and collection provisions under the FAA will not apply to the charge. The debt established by the FAA in respect of the charge is considered to be extinguished once the charge and applicable interest are paid under the Act.

Extending time period for filing returns or for providing information

s 281

39. The Minister may extend, in writing, the time for filing a return or providing information. For example, where there is a natural disaster (e.g., a flood or ice storm) that has an impact on communications or postal delivery in a large geographic area of Canada, the Minister may extend the time for registrants in this area to file their GST/HST returns. The due date of the return may be extended where a registrant has filed a request for such an extension with the CRA. (For information regarding the application of penalty and interest, or interest at the new prescribed rate, in such a case, see **subparagraph 40(d).**)

Exceptions to the application of penalties and interest

The 6% penalty not to exceed security held – before April 1, 2007
ss 280(5)

40. Penalty (and, in some cases, penalties and interest) may not apply in the following situations:

- (a) where on a particular day before April 1, 2007, the Minister holds security under section 314 and any amount due under Part IX of the Act is not paid or remitted when required before April 1, 2007, the 6% penalty under section 280 applies on that particular day only to the extent that the total of all amounts outstanding on the particular day exceeds the value of the security at the time it was accepted by the Minister;

False statements or omissions

Gross negligence penalty

s 285

44. A person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is, in this paragraph, referred to as a return) made in respect of a reporting period or transaction is liable to a penalty of the greater of \$250 and 25% of the total of

(a) if the false statement or omission is relevant to the determination of the person's net tax for a reporting period, the amount determined by the formula

$$A - B$$

where

A is the person's net tax for the period, and

B is the amount that would be the person's net tax for the period if the net tax were determined on the basis of the information provided in the return,

(b) if the false statement or omission is relevant to the determination of an amount of tax payable by the person, the amount, if any, by which

(i) that tax payable

exceeds

(ii) the amount that would be the tax payable by the person if the tax were determined on the basis of the information provided in the return, and

(c) if the false statement or omission is relevant to the determination of a rebate, the amount, if any, by which

(i) the amount that would be the rebate payable to the person if the rebate were determined on the basis of the information provided in the return

exceeds

(ii) the amount of the rebate payable to the person.

Third-party civil penalties

s 285.1

45. There are rules that apply for purposes of applying civil penalties to third parties that, on or after June 29, 2000, make, or participate in the making of, false statements or omissions in relation to GST/HST matters. Subsection 285.1 provides for two penalties: the first one is directed primarily at those who prepare (or participate in), sell, or promote a tax scheme or tax shelter-like arrangement; and the second one is directed at those who provide tax-related services to a person. The first of these two penalties will be referred to as the "planner penalty" and the latter will be referred to as the "preparer penalty".

The planner penalty
ss 285.1(2)

46. The planner penalty provides for a penalty to a person who makes, furnishes, participates in the making of, or causes another person to make or furnish, a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, is a false statement that could be used by another person for a purpose of Part IX of the Act. Unlike the preparer penalty (explained in paragraph 53), the person who could use the false statement does not need to be identified in order to apply this penalty.

Meaning of culpable conduct ss 285.1(1)	<p>47. The term “culpable conduct” means conduct, whether an act or a failure to act, that:</p> <ul style="list-style-type: none"> • is tantamount to intentional conduct; • shows an indifference as to whether Part IX of the Act is complied with; or • shows a wilful, reckless or wanton disregard of the law.
False statement ss 285.1(1)	<p>48. A false statement is not limited to returns. A false statement includes a statement that is misleading because of an omission from the statement regardless of any intention to deceive. The false statement may be in the form of an oral or documentary representation. For example, the statement may be included on election forms, correspondence, invoices, valuation reports, certifications, financial statements and their notes, contracts or selling documents.</p>
Calculating the planner penalty ss 285.1(3)	<p>49. The penalty to which a person is liable under subsection 285.1(2) for a false statement is \$1,000. However, when a false statement is made in the course of a planning activity or a valuation activity, the penalty amount is the greater of \$1,000 or the total of the person's gross entitlements for the planning or valuation activity (calculated at the time when the Notice of Assessment of the penalty is sent to the person).</p>
Meaning of planning activity ss 285.1(1)	<p>50. The term “planning activity” includes organizing or creating, or assisting in the organization or creation of, an arrangement, an entity, a plan, or a scheme. It also includes participating (directly or indirectly) in the selling of an interest in, or in the promotion of, an arrangement, an entity, a plan, a property or a scheme.</p>
Meaning of valuation activity ss 285.1(1)	<p>51. The term “valuation activity” of a person means anything done by the person in determining the value of a property or a service.</p>
Meaning of gross entitlements ss 285.1(1)	<p>52. The term “gross entitlements” of a person at any time, in respect of a planning activity or a valuation activity of the person, means all amounts to which the person, or another person not dealing at arm's length with the person, is entitled, either before or after that time and either absolutely or contingently, to receive or obtain in respect of the activity.</p>
The preparer penalty ss 285.1(4)	<p>53. The preparer penalty applies to a person who makes, or participates in, assents to, or acquiesces in the making of a statement to, by or on behalf of another person that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, is a false statement that could be used by or on behalf of the other person for a purpose of Part IX of the Act. It can apply to any person in the aforementioned situation and is not limited to a GST/HST return preparer.</p>
Calculating the preparer penalty ss 285.1(5)	<p>54. The penalty to which a person is liable under subsection 285.1(4) in respect of a false statement is the greater of:</p> <ul style="list-style-type: none"> (a) \$1,000; and (b) the lesser of <ul style="list-style-type: none"> (i) the total of \$100,000 and the person's gross compensation, at the time at which the Notice of Assessment of the penalty is sent to the person for the false statement that could be used by or on behalf of the other person; and

- (ii) 50% of the decrease in the tax liability or increase in the net tax refund or rebate claim caused by the reporting of a false statement by the other person.

Meaning of gross compensation
ss 285.1(1)

55. The term “gross compensation” of a particular person at any time, in respect of a false statement that could be used by or on behalf of another person, means all amounts to which the particular person, or any person not dealing at arm's length with the particular person, is entitled, either before or after that time and either absolutely or contingently, to receive or obtain in respect of that statement.

Maximum penalty where a person is liable to pay both preparer and planner penalties
ss 285.1(14)

56. The planner penalty and the preparer penalty could both apply to the same false statement. However, a person who is liable to pay penalties under both subsections 285.1(2) and 285.1(4) for the same false statement is required to pay penalties that are not more than the greater of the penalty under subsection 285.1(2) and the penalty under subsection 285.1(4).

Exceptions to the third-party penalty

Reliance in good faith
ss 285.1(6)

57. A person who acts on behalf of another person is not considered to have acted in circumstances amounting to culpable conduct in respect of a false statement solely because the person relied, in good faith, on information provided to them by the other person or, because of such reliance, failed to verify, investigate or correct the information.

Non-application of good faith reliance
ss 285.1(7)

58. The reliance on good faith exception does not apply in respect of a statement that a person makes (or participates in, assents to or acquiesces in the making of) in the course of an excluded activity.

Meaning of excluded activity
ss 285.1(1)

59. The term “excluded activity”, in respect of a false statement, means the activity of

- promoting or selling (whether as principal or agent or directly or indirectly) an arrangement, an entity, a plan, a property or a scheme (in this definition referred to as the “arrangement”) where it can reasonably be considered that one of the main purposes for a person's participation in the arrangement is to obtain a tax benefit, or
- accepting (whether as principal or agent or directly or indirectly) consideration in respect of the promotion or sale of an arrangement.

Meaning of tax benefit
ss 285.1(1)

60. The term “tax benefit” means a reduction, avoidance or deferral of tax, net tax or other amount payable under Part IX of the Act or an increase in a refund or rebate under Part IX of the Act.

Clerical or secretarial services
ss 285.1(9)

61. A person is not considered to have made or furnished, or participated in, assented to or acquiesced in the making of, a false statement solely because the person provided clerical services (other than bookkeeping services) or secretarial services with respect to the statement.

No third-party penalty if no false statement

62. A third party is not liable to a penalty under section 285.1 if there is no false statement. When considering the application of third-party civil penalties, the CRA will respect the intention of the legislation. Specifically, it is meant to apply to those who counsel and assist others in making false statements when they file their returns or who are wilfully blind to obvious "errors" when preparing, filing or assisting another person in filing a return. It also is intended to apply to arrangements and plans that contain false statements, often without the knowledge of the client.

Not intended to apply to certain activities

63. Section 285.1 is not intended to apply to:

- tax-planning activities that comply with the law;
- honest mistakes or oversights;
- differences of interpretations or *bona fide* uncertainty (e.g., the issue is not well settled in jurisprudence); and
- activities that are administratively acceptable to the CRA.

Further information

64. For detailed information on third party penalties as they apply both under this Act and under the *Income Tax Act*, refer to Information Circular IC01-1, *Third-Party Civil Penalties*.

Burden of proof in respect of penalties

ss 285.1(16)

65. Where the Minister assesses a person a penalty under either section 285 or 285.1, and the penalty is an issue under appeal, the Minister has the burden of establishing the facts justifying the assessment of the penalty.

Criminal penalties

66. Criminal penalties are imposed in cases where a person is convicted of an offence for failure to comply with any requirement under Part IX of the Act.

Failure to file a return, failure to provide information, or interfering with or hindering an officer

Offences
ss 326(1)

67. A person who

- fails to comply with a requirement to make or file a return;
- fails to keep adequate records (as specified by the Minister);
- fails to provide to CRA officers, when required, any document or information, or reasonable access to any document or property;
- who interferes with, hinders, molests, any CRA official from doing anything the official is authorized to do under the Act, or
- who prevents any official from doing anything the official is authorized to do under the Act

is guilty of an offence.

Penalty for offences
ss 326(1)

68. In addition to any penalty otherwise provided, a summary conviction under subsection 326(1) carries

- a fine of not less than \$1,000 and not more than \$25,000, or
- both a fine referred to above and imprisonment for a term not exceeding twelve months.

Exception
ss 326(3)

69. A person convicted under subsection 326(1) is not liable to pay a penalty imposed under section 280.1 (failure to file a return when required), section 283 (failure to answer demand) or section 284 (failure to provide information) for the same failure, unless a Notice of Assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

False statements, omissions, or destruction or alteration of documents

Offences
ss 327(1)

70. A person is guilty of an offence if that person has:

- made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, application, certificate, statement, document or answer filed or made as required by or under Part IX of the Act or the regulations made under Part IX of the Act;
- destroyed, altered, mutilated, secreted or otherwise disposed of any documents of a person or made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular in the documents of a person for the purpose of evading the payment or remittance of any tax or net tax imposed under Part IX of the Act, or to obtain a refund or a rebate to which the person is not entitled under Part IX of the Act;
- wilfully, in any manner, evaded or attempted to evade compliance with Part IX of the Act or payment or remittance of tax or net tax imposed by Part IX of the Act, or obtained or attempted to obtain a rebate or refund to which the person is not entitled under Part IX of the Act; or
- conspired with any person to commit any of the foregoing offences.

Fine
ss 327(1)

71. In addition to any penalty otherwise provided, a summary conviction under subsection 327(1) carries a fine of not less than 50%, and not more than 200%, of the amount of tax or net tax sought to be evaded, or of the rebate or refund sought to be gained. Where the amount sought to be evaded or gained cannot be ascertained, a fine of not less than \$1,000, and not more than \$25,000, shall be imposed. The fine may be accompanied by imprisonment for a term not exceeding two years.

Prosecution on indictment
ss 327(2)

72. For the offences listed in paragraph 70, the Attorney General of Canada may proceed by indictment. In addition to any penalty otherwise provided, a conviction carries a fine of not less than 100%, and not more than 200%, of the amount of tax or net tax sought to be evaded, or of the amount of the rebate or refund sought to be gained. Where the amount sought to be evaded or gained cannot be ascertained, a fine of not less than \$2,000, and not more than \$25,000, shall be imposed. The fine may be accompanied by imprisonment for a term not exceeding five years.

Penalty on conviction
ss 327(3)

73. A person convicted of an offence under section 327 is not liable to pay a penalty imposed under section 280.1 (failure to file a return when required), section 283 (failure to answer demand), section 284 (failure to provide information), section 285 (false statements or omissions) or section 285.1 (third party penalty) for the same evasion or attempt, unless a Notice of Assessment for that penalty was issued before the information or complaint giving rise to the conviction was laid or made.

Stay of appeal
ss 327(4)

74. Where an assessment is under appeal and substantially the same facts are at issue as those that are at issue in a prosecution under section 327, the Minister may stay the appeal pending the determination of the outcome of the prosecution.

Failure to pay, collect or remit taxes

- Fine
ss 329(1) 75. Every person who wilfully fails to pay, collect or remit an amount of tax or net tax as and when required under Part IX of the Act is guilty of an offence. In addition to any penalty or interest otherwise provided, a summary conviction carries a fine not exceeding the sum of \$1,000 and an amount equal to 20% of the amount of tax or net tax that should have been paid, collected or remitted, or both the above fine and imprisonment for a term not exceeding six months.
- General offence
ss 329(2) 76. A person who fails to comply with any provision under Part IX of the Act for which a penalty is not provided under sections 326 to 329, is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$1,000. It should be noted that this memorandum does not list all offences contained in the Act.

Assessment and collection of penalties and interest

Assessing penalties and interest

- Assessing penalties and
interest
para 296(1)(c) 77. The Minister may assess any penalty and interest payable by a person under Part IX of the Act.
- Time limit for assessing
penalties
para 298(1)(e) 78. Generally, the Minister may not assess a penalty more than four years after the person became liable for the penalty. However, there is no time limitation for assessing the following penalties:
- the 6% penalty assessed under section 280;
 - the failure-to-file penalty under section 280.1;
 - the penalty for false statements and omissions under section 285; and
 - the third party penalty under section 285.1.
- Assessing interest
ss 298(1) 79. There is no time limitation in the Act for assessing interest.

Collecting penalties and interest

- Assessment before
collection
ss 315(1) 80. The Act provides for a number of methods by which the Minister may collect amounts outstanding, including penalty and interest. These collection actions include garnishment, deduction or set-off of the debt by amounts owing to the person by the Receiver General, seizure of chattels, or acquisition of the person's property. However, the Minister may not take these types of collection actions in respect of any amount payable, other than interest or the 6% penalty under section 280, unless the amount has been assessed.

Enquiries by telephone

Technical enquiries on the GST/HST: 1-800-959-8287

General enquiries on the GST/HST: 1-800-959-5525 (Business Enquiries)

If you are located in Quebec: 1-800-567-4692 (Revenu Québec)

All technical publications on GST/HST are available on the CRA Web site at www.cra.gc.ca/gsthsstech.