

## Penalties and Fines

References: sections 76, 77, 95, 96, 97, 108, 110, subsections 1(2), 66.1(4.12), 74.2(7), 75(1), (4), (14), clause 79(7)(a), Regulation 183-clause 503(5)(a)

### Application

*This bulletin replaces the discussion on “Penalties and Fines” in Information Bulletin Number 2742 originally published February 1993 and is updated for changes in legislation and comments contained in Information Bulletin 2743-R1.*

*The bulletin sets out the policy of the Corporations Tax Branch (Branch). It is provided as a guide to taxpayers and is not intended as a substitute for the relevant legislation. Any references to legislation are to the provisions of the Corporations Tax Act (Ontario) (CTA) and its Regulations, unless otherwise noted.*

### Introduction

1. To ensure fairness and encourage compliance and administrative efficiency, several provisions in the CTA impose or permit the Ontario Minister of Finance (Minister) to assess penalties on corporations, individuals and other persons. In addition to the penalties that may be assessed by the Minister, persons convicted of serious offences under the CTA are liable to substantial fines and, or imprisonment.
2. Penalties, by their nature, are determinable monetary amounts and may be imposed by the Minister in the absence of court proceedings. Fines and, or imprisonment, on the other hand, are imposed by the courts. The maximum fine and term of imprisonment that can be imposed is specified in the CTA.
3. This bulletin describes the penalties and fines associated with:
  - failure to file a return
  - making of false statements and omissions
  - failure to provide a notice on the sale of assets
  - false certification by a small business
  - non-collection of tax on uninsured benefit arrangements
  - general offence, and
  - offence of officers, directors and agents.

### Failure to Deliver a Return: First Occurrence [Subsection 75(1)]

4. Under subsection 75(1), every corporation, other than a corporation exempt from tax under section 57 and section 71 (e.g., a municipal, provincial, or federally owned corporation, a registered charity or a non-profit organization), is required to deliver a tax return within six months after the end of the taxation year. A return is deemed to be delivered on the day the Minister receives the return if it is mailed, or on the day the Minister acknowledges receipt and acceptance of the return, if it is filed electronically.
5. As defined in subsection 1(2), a return must meet specified requirements pertaining to form, medium, content, accompanying documents, and manner of delivery. Unless the return is filed electronically, a return will include financial statements prepared in accordance with generally accepted accounting principles. For a discussion on the financial statements to be attached to the return and the filing requirements under the CTA refer to Information Bulletins 4001 to 4003.

Failure to Deliver a  
Return: First  
Occurrence  
[Subsection 75(1)]  
(continued)

6. On a corporation's initial failure to file a return as and when required under the CTA, subsection 76(1) provides a penalty computed as follows:
  - 5% of the "balance of tax owing for the taxation year including interest and penalties" (balance of tax) as at the return due date, **plus**
  - 1% of the balance of tax as at the return due date times the number of complete months (not exceeding twelve) from the return due date to the date the return is actually delivered.
7. The maximum penalty that can be assessed under subsection 76(1) is 17% of the balance of tax at the return due date excluding any penalty under this subsection.

Application of  
Failure to Deliver  
Penalty

8. The penalty under subsection 76(1), does not apply to late-filed returns if, at the time the return was due, it was reasonable to consider that the corporation was exempt from filing under subsection 75(5). A corporation is exempt from filing a return, if the corporation in the taxation year:
  - was a Canadian controlled private corporation throughout the year
  - was not a financial institution or insurance corporation
  - was not subject to corporate minimum tax (either alone or as part of an associated group) and had no taxable income or tax payable under the CTA
  - filed a federal T2 return with the Canada Customs and Revenue Agency (CCRA), and
  - provided the Ministry of Finance its CCRA business number.
9. The word "reasonable" is not defined in the CTA. Accordingly, the particular facts of each situation would be examined to determine reasonableness. Generally, if a corporation does not otherwise have a capital tax liability, it would be reasonable to conclude that the corporation is exempt from filing where it has filed a return with either no income or a loss with CCRA and the corporation has not intentionally avoided compliance with the CTA through errors, omissions or false statements.
10. Pursuant to clause 79(7)(a), a late filing penalty assessed under subsection 76(1) is not impacted by the application of a loss from a subsequent taxation year. The penalty is computed on the tax payable when the return was required to be filed and not on the reduced tax payable after the application of a loss carried back from a subsequent taxation year.
11. Under section 77, a corporation may avoid the imposition of a late filing penalty by requesting an extension of time to file the corporation's return. A request for an extension of time under section 77 should be made in writing to the Director of the Branch. A time extension is normally considered only before the return is filed and is granted only in exceptional circumstances.
12. In addition, the late filing penalty under subsection 76(1) may be waived for a taxation year if the return is accepted under Ontario's voluntary disclosure policy. The Ministry's policy is described in a Tax Information Bulletin dated January 2000 titled "*Voluntary Disclosure*".

Failure to File a  
Return: Second  
and subsequent  
Occurrence  
[Subsection 76(2)]

13. Subsection 76(2) provides a penalty for repeated failure to file or for filing an incomplete return. The penalty applies to a corporation that has:
  - failed to deliver a return on time as and when required by the provisions of the CTA
  - received a demand for a return for the taxation year under subsection 75(4), and
  - failed to deliver a return as and when required under the CTA for any of the three previous taxation years.
14. Subsection 76(2) parallels subsection 162(2) of the *Income Tax Act* (Canada) (ITA). Consistent with the federal approach under subsection 162(2), administratively the Branch will not apply a penalty under subsection 76(2) unless a late filing penalty was actually assessed (irrespective of whether the late filing penalty was subsequently reversed or eliminated) for any of the three previous taxation years.

Failure to File a Return: Second and subsequent Occurrence [Subsection 76(2)] (continued)

15. The penalty levied under subsection 76(2) is computed as follows:
- 10% of the balance of tax owing as at the return due date, **plus**
  - 2% of the balance of tax as at the return due date times the number of complete months (not exceeding twenty) from the return due date to the date the return is actually delivered.
16. The maximum penalty that can be assessed under subsection 76(2) is 50% of the balance of tax excluding any penalty payable under this subsection.

Comparison Table: Penalties for Failure to Deliver Returns

17. The following table summarizes and provides a comparison on the penalties associated with the late filing of returns:

Item/Penalty	First Occurrence	Second or Repeat Occurrence
Relevant provision	76(1)	76(2)
Paragraphs in this bulletin	4 to 12	13 to 16
<b>Calculation of Penalty:</b>		
% of "balance of tax" at the return due date	5%	10%
<b>plus</b>		
% of "balance of tax" at the return due date	1%	2%
<b>times</b>		
number of months return is late (to the maximum cited)	12	20
Maximum Penalty	17%	50%

False Statements or Omissions

18. A person convicted of tax evasion (false statements or entries, destroying records, wilful evasion, etc.) as described in subsection 76(4) is subject to a fine under subsection 76(5). A fine of not less than the greater of \$500 and 50% of the tax sought to be evaded is charged, to a maximum of not more than double the amount of such tax. Alternatively, a prison term of up to two years may be imposed, or, both the fine and imprisonment. This fine and imprisonment are in addition to any other penalty assessed under the CTA.
19. Subsection 76(6) imposes a penalty upon a corporation, where a person knowingly, or under circumstances amounting to gross negligence, makes an incorrect statement or omission (false statement). The penalty is the greater of:
- \$100, and
  - the sum of 50% of the applicable tax that would be payable on the understatement of income and 50% of the overstated amount of tax credits claimed under subsections 43.2 to 43.12.

The understatement of income in loss years is determined using the rules of subsection 163(2.1) of the ITA and is deemed by subsection 76(8) not to be less than nil.

20. Pursuant to subsection 76(7), the corporate penalty under subsection 76(6) does not apply if a person has been convicted of an offence described in paragraph 18 for the same evasion of tax, unless the penalty was imposed on the corporation before proceedings commenced against that person.

### Repeated Failure to Report

21. If a corporation has failed repeatedly to report an amount in a return delivered under section 75, it is liable under subsection 76(9) for a penalty equal to 25% of the amount of tax applicable to the unreported amount. The unreported amount includes amounts relevant to the computation of all CTA taxes including capital tax, corporate minimum tax and premium tax.
22. This provision parallels subsection 163(1) of the ITA for failure to report an amount in a taxation year where failure also occurred in any of the preceding three taxation years.
23. Examples of situations where a penalty under subsection 76(9) may apply include the following:
  - the corporation was previously audited and assessed with respect to the same amount and the issue is not being considered by the Tax Appeals Branch
  - previous instructions on noncompliance resolution have been disregarded by the corporation, and
  - a voluntary disclosure by the corporation is intentionally incomplete and does not include an amount which the corporation previously failed to report.
24. Pursuant to subsection 76(10), the penalty under subsection 76(9) does not apply if a penalty has been assessed with respect to a false statement or omission concerning the same amount under subsection 76(6).

### Additional Fines

25. Section 95 imposes a fine on conviction of \$200 per day on the following offences:
  - failure to file a return
  - failure to keep books and records
  - failure to produce information and books and records, and
  - hindering an audit or investigation.
26. The fine on conviction for failure to file a return applies to the corporation while other fines under section 95 apply to any person including the corporation and its officers. These fines are in addition to any other penalty charged under the CTA.

### Failure to Provide a Notice of Sale of Assets

27. Where a corporation has an outstanding liability on an assessment or reassessment for a period exceeding three years, subsection 108(1) requires that the Minister be notified in writing by registered mail at least 10 days prior to the sale of any assets of the corporation.
28. Any person who fails to notify the Minister at least 10 days prior to the date of sale is subject to a penalty under subsection 108(2). The penalty is equal to the corporation's outstanding liability under the CTA as at the date of the sale of the assets.

### Non-Collection of Tax on Uninsured Benefit Arrangements

29. Under the CTA, a two percent premium tax is payable on uninsured benefit arrangements. The CTA also requires that the Ontario administrator of the plan collect and remit the taxes to the Minister.
30. Subsection 74.2(7) imposes a penalty on an administrator of the plan that fails to collect the premium tax as required under the CTA. The penalty is equal to the amount of the tax that the administrator failed to collect less the total of the following:
  - amounts recovered by the Minister by directly assessing the members or the planholder(s) of the benefit plan, and
  - amounts paid to the Minister on account of the tax.

### False Certification by a Small Business

31. A small business investment tax credit is available to a financial institution on certain investments made by related financial institutions, specified corporations or insurance corporations such as a below-prime loan in a qualifying small business. Eligibility for this credit is dependent on the size of, the activities of, and the use of funds by the small business.
32. To simplify the eligibility criteria of claiming the small business investment tax credit, the financial institution may obtain certification from the small business that it meets the various eligibility criteria (size, activities and use of funds).
33. Subsection 66.1(4.12) imposes a penalty where a small business makes a false certification and the Minister considers that the individual stating the false facts enclosed therein should reasonably have known that they were false. The penalty is equal to the lesser of \$2,000 and the credit claimed by the financial institution.

### General Offence

34. Every person or corporation that does not comply with the provisions of the CTA or the Regulations, for which no other fine is provided, is liable on conviction to a fine under section 110 that is not less than \$50 or more than \$5,000.

### Liabilities of Officers, Directors, or Agents for Corporate Offences

35. Pursuant to section 96, where a corporation is guilty of an offence under the CTA, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in the commission of the offence is considered to be party to and guilty of the same offence. On conviction, the officer, director or agent is liable to the same fine, applicable to the corporation for the particular offence, whether or not the corporation is prosecuted.

### Time Limit for Offences

36. Under section 97, prosecution for an offence under the CTA must be instituted within six years of the offence.

### For More Information

For further information, please contact Desk Audit, general tax enquiries

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