Corporations Tax

Ontario

Interest on Overpayments, Underpayments and Instalments of Tax

References: Subsections 1(5.1), 78(4), 78(7), 79(2), 79(3.2), 79(4.1), 79(7), 79(10), 82(1), 82(3), 82(6), 82(7), 82(10), 82(11) and 83(2). Section 503 of Regulation 183

Application

This bulletin replaces Information Bulletin 4010R issued January 2007.

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

The bulletin applies to all corporations and other persons required to pay or remit tax under the CTA.

Introduction

Interest Charged or Paid

1. Compound daily interest (simple interest prior to August 1995) is charged on underpayments and deficient instalments of corporations tax but is paid/allowed on overpayments and surplus instalments of tax. Interest at a higher rate is paid/allowed on overpayments and surplus instalments determined as a result of a decision on a notice of objection or appeal to a tax assessment. This higher interest rate commenced in 1998.

The Basis for the Interest

2. Interest is calculated separately for each taxation year. Within the taxation year, the taxpayer's account balance is divided by time period into an instalment account and a tax account.

The Instalment Account

3. The instalment account measures whether a taxpayer has unpaid, underpaid, or overpaid instalments of tax at any particular time during the instalment period. The instalment period starts on the first day of the fiscal period and ends on the day which is the earlier of:

   - the date of the most current assessment or reassessment for the year, and
   - the day before the balance of tax due date for the year.

   In general, the balance of tax due date is two months after the year-end for medium and large corporations, and three months after the year-end for small corporations. More details on the balance of tax due date are in Information Bulletin 4007R1.

4. Interest is calculated daily, based on the balance forward in the account. Once calculated, the interest becomes part of the balance upon which future interest is calculated. This results in compound interest being charged on unpaid or underpaid instalments, and compound interest being allowed on overpaid instalments.

TheTax Account

5. The tax account measures whether a taxpayer owes tax or other amounts such as penalties, or has overpaid its obligations, during the time period after the instalment period. Basically, compound daily interest is charged after the instalment period on any unpaid amounts in respect of the year, or allowed after the instalment period on any overpayments in respect of the year.

The Statement of Account

6. Pursuant to subsection 79(10), the ministry issues Statements of Account to taxpayers to inform them of the balance of their tax or instalment account, including (if applicable) the interest charged or allowed for the period of the statement.

Interest Rates

Three Interest Rates are Used

7. Interest rates are prescribed in section 503 of Regulation 183 as follow:

- interest is charged to taxpayers at an annual rate of three percent above a “base rate” of interest
- interest is allowed to taxpayers at the base rate on surplus instalments and overpayments of tax for 1998 and subsequent taxation years that are determined as a result of an objection or appeal to an assessment
- prior to July 1, 2006, interest is allowed to taxpayers at two percent below the base rate on surplus instalments and overpayments of tax, and
- after June 30, 2006, interest is allowed to taxpayers at three percent below the base rate on surplus instalments and overpayments of tax.

The Base Rate of Interest

8. The base rate of interest is set four times per calendar year, on the 1st of January, April, July and October. The base rate is the average of the prime rates, to the nearest whole percent, announced 2½ months earlier by five chartered banks as prescribed in section 503 of Regulation 183. The base rate for January 1st is the average prime rate for October 15th of the previous year. The base rate for April 1st is the average prime rate for January 15th, and so on.

Calculating the Tax and Instalment Accounts

Deficiency in the Tax or Instalment Account

9. A deficiency in a corporation’s tax or instalment account represents an account receivable by the ministry on which interest is charged. In accordance with subsections 79(2) and (4.1), the deficiency in an account for a taxation year on a particular day is the amount by which the total of:

A. the instalments of tax that are owing up to that day for the instalment account

OR

for the tax account, the tax payable for the year that has been assessed before that day

B. interest charged to the account up to that day

C. amounts refunded by the ministry to the corporation, or applied to other liabilities of the corporation, up to that day

D. reversals or debits to the account up to that day in relation to instalment payments and, for the tax account, in relation to other tax payments

E. reversals or debits to the account up to that day for interest or other amounts previously credited by the ministry to the account

F. other amounts owing under the CTA that are charged to the account up to that day, and

G. for the tax account, penalties for the year that are effective for interest purposes before that day

Deficiency in the Tax or Instalment Account (continued)

exceeds

H. all payments by the corporation and other amounts credited by the ministry to the account up to that day on account of the instalment obligations for the year

I. for the tax account, payments by the corporation and other amounts credited by the ministry to the account up to that day on account of the tax liability for the year

J. interest allowed on the account up to that day, and

K. for the tax account of a mutual fund or investment corporation, the capital gains refund for the year.

Surplus in the Tax or Instalment Account

10. A surplus in a tax or instalment account represents an account payable by the ministry. Interest is allowed on the account for each day it is in a surplus position. In accordance with subsections 82(7) and 83(2), a surplus occurs in the tax or instalment account for a taxation year on any day where the total of factors H to K in paragraph 9 exceed the total of factors A to G.

Recalculating Interest After a Reassessment

Recalculating Instalment Interest

11. Except in the case of loss carry-backs, instalment interest is recalculated whenever instalment obligations change as a result of a reassessment of tax payable. The same approach is used in the *Income Tax Act* (Canada) (ITA).

Interest is based on Minimum Instalment Obligation

12. Instalment interest is based on the instalment method which produces the least amount of debit interest or the greatest amount of credit interest. Instalment methods are discussed in Information Bulletin 4007R1.

13. If the instalment method changes because tax for a year is reassessed, instalment interest is also changed. For example, if a particular year's instalments paid are based on the prior year's tax (as this method provided the minimum annual instalment obligation) and the prior year's tax is increased on reassessment, the minimum annual instalment obligation for the particular year would be increased as well. As a result, instalment interest for the particular year would be recalculated based on the revised minimum annual instalment obligation. This may require the use of one of the other instalment methods discussed in Information Bulletin 4007R1, as the prior year's tax may no longer result in the minimum annual instalment obligation. In any event, because the minimum annual instalment obligation would have increased, instalment interest charges for the particular year would be assessed.

Interest Credit for Loss Carry-back

14. In accordance with subsection 79(7), loss carry-backs are not recognized for the purpose of calculating interest until the latest of the following dates:

- the first day after the end of the loss year
- the day on which the tax return for the loss year is received by the ministry, and
- the day on which the ministry receives the corporation's written request to carry-back the loss.

15. Where a corporation amends a request for a loss carry-back, the amended request may have a different effective date for interest purposes than the original request. If the amendment results in an increase in the loss application, the increase in loss applied is effective for interest purposes on the day the amended request is received by the ministry (the latest of the dates in paragraph 14 for the amended request). If the amendment reduces the loss applied, the amended loss remains credited for interest purposes on the day of receipt of the original request (the latest of the dates in paragraph 14 for the original request).

Loss Carry-back Replaces Deductions Previoulsy Claimed

16. In certain circumstances, a corporation may wish to reduce a loss or deduction previously claimed in order to take advantage of losses realized in a subsequent taxation year. A corporation may request an amendment to a prior year's tax return to reduce a deduction previously claimed in that taxation year and substitute losses carried back from a subsequent year. As a result, there is a period of time from the due date of the tax return for the taxation year that has been adjusted to the date the loss carry-back from the subsequent year was requested during which there is a balance of tax outstanding. In accordance with subsection 79(7), the loss carry-back is not recognized for the purpose of calculating interest until the day the loss carry-back is requested. Therefore, interest should be charged on the balance of tax outstanding. However, it is the policy of the ministry not to charge interest in these circumstances, provided there was no income tax payable under Part II of the CTA on the return as originally filed and there is no income tax payable as a result of the amendments requested. This policy is effective for new requests made in respect of taxation years open to assessment on or after November 1, 2005.

Loss Carry-back Impact on Late-Filing Penalty

17. Also in accordance with subsection 79(7), reassessed tax relating to a loss carry-back does not affect the amount of any late-filing penalty previously assessed under subsection 76(1).

No Interest When Return Filed Late

18. In accordance with subsection 82(6), when a return for a particular year is late or incomplete, and there is a surplus in the tax account for that year (i.e., overpayment), no interest will be allowed from the day the return was due to the day it is received by the ministry.

Effective Dates of Penalties

19. In accordance with paragraph 1 of subsection 79(3.2), a penalty assessed pursuant to subsection 76(1) for filing a tax return late is effective for calculating interest on the due date for the return.

20. In accordance with paragraph 2 of subsection 79(3.2), a penalty assessed pursuant to subsection 76(6) (i.e., a penalty for making a false statement on a tax return, etc.) and a penalty assessed pursuant to subsection 76(9) (i.e., a penalty for repeatedly failing to report an amount on tax returns) are effective for calculating interest on the balance of tax due date for the taxation year.

21. In accordance with paragraph 3 of subsection 79(3.2), all other penalties under the CTA are effective for interest purposes on the day they are assessed.

Interest Allowed for Late-Filed Elections

22. Subsection 1(5.1) adopts the "fairness package" provision of subsection 220(3.2) of the ITA which permits certain amended, revoked or late-filed elections to be filed. Elections which qualify under the ITA criteria, and which apply for purposes of the CTA, will qualify under the CTA as well.

23. Subsection 82(10) parallels the treatment under the ITA for a reassessment made as a result of a "fairness package" election. In such cases, interest will not be allowed on any resulting account surplus until the day the late-filed, amended or revoked election request was received by the federal Minister of National Revenue.

Interest Charged on Reassessed Income Tax or Capital Tax for Allocation Change

24. By administrative concession, the ministry may reduce the interest that is charged when corporations income tax or capital tax is reassessed (increased) due to a reallocation of income or capital to Ontario from another jurisdiction in Canada. Interest is charged to the extent that credit interest is allowed by the other Canadian jurisdiction.

Interest Charged on Instalment Account Resulting from Allocation Change

25. This administrative concession also applies to the interest that is charged when a corporation's instalment account is increased due to a reassessment of income tax or capital tax in the current or a prior taxation period as a result of a reallocation of income or capital to Ontario from another jurisdiction in Canada. Interest is charged on any deficient instalments only to the extent that credit interest on excessive instalments is allowed by the other Canadian jurisdiction.

Payments by Taxpayers

When are Payments Credited to Account

26. In accordance with subsection 503(5) of Regulation 183, a payment made by a taxpayer, whether an instalment or other payment, is recognized for calculating interest on the day it is received by the ministry. Payments received by a bank or other authorized financial institution on behalf of the Ministry of Revenue are recognized on the day they are received by the institution.

Application of Payments

27. Under subsection 78(7), a payment made by a taxpayer for a taxation year, or any other amount that is applied or credited to the taxpayer's account on account of amounts payable for that year, is applied in the following order:

    1. to tax payable
    2. to penalties payable
    3. to interest, and finally
    4. to other amounts payable by the taxpayer for the taxation year.

Transfer of Account Surplus to Other Taxation Year

28. Under subsections 82(1) and (3), where the ministry has determined that there is a surplus in the tax account of a taxpayer, the ministry is permitted to transfer the surplus to another taxation year with effect on the day of the determination. By administrative concession, where the ministry makes a transfer of an account surplus pursuant to a written request by a taxpayer for the transfer, the ministry will recognize the transfer for interest purposes on the day the request was received by the ministry.

Refunds by the Ministry

Application of Account Surplus

29. Rather than refunding an account surplus to a taxpayer, the ministry will apply the surplus against any tax liability under a tax statute administered by the ministry of Revenue. The surplus will first be applied against any "trust fund" liability under the *Retail Sales Tax Act*, *Gasoline Tax Act*, *Tobacco Tax Act*, or *Fuel Tax Act*, and thereafter will be applied to any other Ontario tax liabilities. The surplus will also be applied to the oldest liability first when more than one liability exists.

Refund of Instalments before Tax Return is Assessed

30. As noted in Information Bulletin 4007R1, the ministry may refund the surplus in the instalment account of a taxpayer before the tax return for the year has been assessed if the taxpayer makes a written request for the refund. The ministry may request forecast financial statements of the taxpayer before making the refund.

Recovery of Wrongful Refunds

31. In accordance with subsection 82(11), the ministry can recover by assessment any amount refunded, paid to, or applied to another liability of a taxpayer where it is subsequently determined that the amount exceeds the amount to which the taxpayer is entitled. The excess amount is a liability of the taxpayer and is subject to interest charge from the date it was refunded, paid or applied. The assessment to recover the amount can be issued at any time and is not limited by the time frames for assessment in section 80.

Interest not Allowed on Erroneous Payments

32. In accordance with subsection 79(2), the ministry will allow or pay interest on an amount paid by a taxpayer **only** where the amount was paid on account of the taxpayer's liability under the CTA. Interest is **not** allowed or paid in the following circumstances:

- a taxpayer makes a payment erroneously to the ministry
- a taxpayer pays an amount that is substantially more than its tax liability for the year reasonably estimated at the time of the payment, or
- a corporation that is exempt from filing (EFF) an Ontario corporations tax return pays an amount to the ministry. EFF corporations are discussed in Information Bulletin 4001R1.

For More Information

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