



Late-filed subsection 225.2(4) elections

Legislative references	Subsections 225.2(4) and (5) of the <i>Excise Tax Act</i> (the Act)
National coding system file number	11585-38
Effective date	October 3, 2003

Note: Please note that the following policy statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.

Issue

This policy statement provides guidelines on the application of subparagraph 225.2(5)(c)(ii) of the Act, which states “any later day that the Minister may allow”, where a selected listed financial institution (SLFI) requests to file a subsection 225.2(4) election after the due date of the return for the reporting period of the SLFI in which the election is to become effective.

Decision

A SLFI’s request to late file a subsection 225.2(4) election will be considered on a case-by-case basis within the context of the following guidelines:

1. A request to late file an election may be accepted if the parties to the election meet the criteria set out in subsection 225.2(4) of the Act on the day the election is to become effective and all of the following conditions are met:
 - included in the request is the form GST497, *Election Under the Special Attribution Method for Selected Listed Financial Institutions and Notice of Revocation* (unless it has previously been filed), and a written explanation as to why the SLFI filed the election late;
 - as of the date of the request, all the GST/HST returns that are due by the SLFI have been filed; and
 - as of the effective date of the election, the parties to the election have consistently operated as if the election were in effect.

- The following information clarifies the phrase “the parties to the election have consistently operated as if the election were in effect”:

Where a SLFI and a closely related corporation who is not a SLFI make an election under subsection 225.2(4) of the Act, the amount the SLFI must add in its net tax adjustment with regard to the property or services to which the election under section 150 of the Act applies will be equal to tax calculated on the supplier’s cost excluding remuneration to the supplier’s employees, the cost of financial services, and tax under Part IX of the Act. Operating as if the election was in effect would be evidenced on the SLFI’s form GST 494, *Goods and Services Tax/Harmonized Sales Tax Final Return for Selected Listed Financial Institutions*, where the calculation of the SLFI’s net tax adjustment is consistently based upon the supplier’s cost as of the election’s requested effective date.

-
2. A request to late file an election will not be accepted under the following circumstances:
- (a) If the parties to the election **do not** meet the criteria set out in subsection 225.2(4) of the Act on the day the election is to become effective; or
 - (b) If the parties to the election **do** meet the criteria set out in subsection 225.2(4) of the Act on the day the election is to become effective **but**
 - form GST497 has not been filed with the application (or has not previously been filed);
 - as of the date of the request, **not** all GST/HST returns that are due by the SLFI have been filed;
 - as of the effective date of the election, the parties to the election have **not** been consistently operating as if the election were in effect (For example, a SLFI cannot make an application to file the election late in order to amend its net tax adjustment to reflect the supplier's costs); or
 - the parties were negligent or careless in complying with the election provisions.

Example

Facts

1. A selected listed financial institution (SLFI) as that term is defined in subsection 225.2 (1) of the Act is required to compute an adjustment to its net tax calculated in accordance with subsection 225.2(2) of the Act.
2. On April 1, 1997, the SLFI and a closely related corporation who was not a SLFI had an election under section 150 of the Act in effect.
3. As of April 1, 1997, the SLFI has calculated its net tax adjustment on its form GST494, as if the election under subsection 225.2(4) of the Act were in effect and it has consistently filed its returns accordingly; however the SLFI did not file the prescribed form for the election, form GST497, with the Minister.
4. The SLFI submitted a request on October 22, 2007, to file the election under subsection 225.2(4) of the Act, with April 1, 1997 as the effective date of the election. Included in the request was an explanation as to why the election was filed late and the completed form GST497.
5. At the time the SLFI requested to late file the subsection 225.2(4) election, all of its GST/HST returns that were due were filed.

Issue

Will the SLFI's request to late file the subsection 225.2(4) election with the effective date of April 1, 1997, be accepted?

Comments

In this example all the following conditions were met:

- the parties to the election met the criteria set out in subsection 225.2(4) of the Act on the effective date of the election;
- form GST497 was filed with the request;
- as of the date of the request, all the GST/HST returns that are due by the SLFI have been filed; and
- as of the effective date of the election, the parties have been consistently operating as if the election were in effect.

Therefore, the SLFI's request to late file a subsection 225.2(4) election with an effective date of April 1, 1997, would generally be accepted where the explanation as to why the election was filed late demonstrates that the parties were not negligent or careless in complying with the election provisions.