



Standardized Accounting

The information in this bulletin 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 *Excise Tax Act* or its Regulations, 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 the toll-free number 1-800-959-8287.

If you are located in Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692.

Table of contents

- Introduction..... 1
- Refunds and rebates 2
 - Restrictions on refunds and rebates 2
 - Interest on refunds and rebates..... 2
 - New prescribed interest rate paid on refunds and rebates 3
 - Minimum interest paid on refunds and rebates..... 3
 - Automatic offsets of refunds, overpayments, or rebates to amounts owing..... 3
- Penalties and interest..... 4
 - Interest and the 6% penalty imposed under section 280..... 4
 - Interest and penalty on late or deficient instalment payments 4
 - Non-deductibility of interest and the 6% penalty under section 280..... 5
 - New section 280.1 penalty for filing GST/HST returns late (“failure to file” penalty)..... 5
 - Minimum penalty and interest..... 6
 - Penalty imposed for the failure to file a return when required pursuant to a demand 7
 - Extending the time for filing a GST/HST return, remitting net tax or paying tax 7
 - Cancelling or waiving penalties and interest 7
 - Taxpayer relief requests 7
 - Wash transactions 8
 - Due diligence defence 9
- Voluntary Disclosures Program..... 9
- Dishonoured instruments..... 9
- Misallocated payments 9
- Summary of Standardized Accounting Legislative Changes to Part IX of the ETA..... 10
- Appendix — Frequently Asked Questions (FAQs)..... 12

Introduction

The *Budget Implementation Act, 2006*, which received Royal Assent June 22, 2006, introduced several legislative amendments to the *Excise Tax Act*, the *Excise Act, 2001*, the *Income Tax Act* and the *Air Travellers Security Charge Act*, which became effective April 1, 2007. These legislative amendments harmonized a number of accounting, interest, penalty and related administrative and enforcement provisions. Combined with previous legislative amendments made in the *Budget Implementation Act, 2003*, these provisions (referred to as standardized accounting provisions) provide an integrated set of rules for payment due dates, interest, and penalties that will simplify the system for both business and government administration.

La version française du présent document est intitulée *Comptabilité normalisée*.



This bulletin discusses the legislative amendments made to Part IX of the *Excise tax Act* (ETA) to implement the standardized accounting provisions, and legislative amendments to the *Income Tax Act* that may have an impact on GST/HST registrants. All legislative references are to the ETA, unless otherwise noted.

Refunds and rebates

Restrictions on refunds and rebates

Prior to April 1, 2007, under subsection 229(2), a refund of net tax for a reporting period was not paid to a person unless the person had filed all outstanding GST/HST returns that were required to be filed under Division V for the reporting period and all previous reporting periods. Similarly, under subsection 230(2), a person was not refunded an overpayment of net tax for a reporting period unless the person was up to date in filing its GST/HST returns.

Effective April 1, 2007, these provisions were amended so that a person will not be paid at any time a net tax refund, or an overpayment of net tax, for a reporting period until all returns of which the CRA has knowledge, and that are required to be filed on or before that time by the person under the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, and the *Air Travellers Security Charge Act* have been filed.

When a person filed an application for a GST/HST rebate before April 1, 2007, there was no restriction in the ETA for the person to be paid the rebate, if the person had outstanding GST/HST returns at the time the rebate was paid. However, effective April 1, 2007, under new section 263.02, a person will not be paid a rebate under the ETA at any time until all returns of which the CRA has knowledge, and that are required to be filed on or before that time under all the above Acts, have been filed.

Example — Restriction on payment of rebates

2006	Effective April 1, 2007
<p>FACTS</p> <ul style="list-style-type: none"> • August 15, 2006 – Mr. Z, who is a GST/HST registrant, files an application for a rebate of tax paid in error in the amount of \$3,000. • September 14, 2006 – Rebate application assessed, and approved, as filed. • September 14, 2006 – Mr. Z also has an outstanding GST/HST return for the reporting period, June 1 to June 30, 2006. 	<p>FACTS</p> <ul style="list-style-type: none"> • August 15, 2007 – Mr. Z, who is a GST/HST registrant, files an application for a rebate of tax paid in error in the amount of \$3,000. • September 14, 2007 – Rebate application assessed, and approved, as filed. • September 14, 2007 – Mr. Z also has an outstanding GST/HST return for the reporting period, June 1 to June 30, 2007.
<p>LEGISLATION</p> <p>Restriction on payment of GST/HST rebate of tax paid in error</p> <ul style="list-style-type: none"> • None 	<p>LEGISLATION</p> <p>Restriction on payment of GST/HST rebate of tax paid in error</p> <p>ETA, s 263.02</p> <ul style="list-style-type: none"> • Yes. No payment of rebate until outstanding return filed.

Interest on refunds and rebates

Prior to April 1, 2007, under subsection 229(3), interest on a refund of net tax for a reporting period, or under subsection 230(3), interest on an overpayment of net tax, was paid beginning on the day that is 21 days after the later of:

- the day all GST/HST returns for that reporting period and previous reporting periods had been filed; and
- the day the GST/HST return in which the refund or overpayment was claimed was filed and ending on the day the refund was paid.

Subsections 229(3) and 230(3) were both amended so that interest on a refund of net tax, or interest on a refund of an overpayment of net tax, for a reporting period that ends on or after April 1, 2007, will be paid beginning on the day that is 30 days after the later of:

- the day the GST/HST return in which the refund is claimed is filed with the CRA, and
- the day following the last day of the reporting period, and ending on the day the refund is paid.

Note that under the amendments to subsections 229(3) and 230(3), interest continues to accrue on a refund for a reporting period, even if there are outstanding GST/HST returns.

Prior to April 1, 2007, under subsection 297(4), when a GST/HST rebate was paid to a person, the CRA paid the person interest on the rebate beginning on the day that was:

- in the case of a rebate filed under section 257, 258 or 259, 21 days,
- and in any other case, 60 days

after the application in which the rebate was claimed was filed with the CRA and ending on the day the rebate was paid.

Subsection 297(4) was amended so that interest will be paid on all rebates, beginning on the day that is 30 days after the application in which the rebate is claimed is filed with the CRA and ending on the day the rebate is paid. For any rebate application filed under section 259, 259.1, or 261.01, this amendment applies where the claim period ends on or after April 1, 2007. For all other rebates, this amendment applies where the rebate is claimed in an application filed with the CRA on or after April 1, 2007.

New prescribed interest rate paid on refunds and rebates

Prior to April 1, 2007, the prescribed interest rate was determined by reference to the rate charged on 90-day Treasury Bills and was adjusted quarterly. The *Interest Rate (Excise Tax Act) Regulations* will be amended so that, effective April 1, 2007, the prescribed interest rate paid on a refund of net tax or on a rebate of GST/HST will be the basic rate, plus 2%. "Basic rate" will be defined in the regulations and will be based on the rate charged on 90-day Treasury Bills, adjusted quarterly, and rounded up to the nearest whole percentage point (expressed as a percentage per year).

Minimum interest paid on refunds and rebates

Effective April 1, 2007, under subsection 297.1(2), interest of \$2 or less is not paid on a rebate or refund to a person. However, the CRA may apply this amount of interest against an amount that the person owes to Her Majesty in right of Canada. This provision replaces subsections 229(4) and 230(4), which stated that interest of less than \$1 was not paid on a refund to a person and subsection 297(5), which stated that interest of less than \$1 was not paid on a rebate to a person.

Automatic offsets of refunds, overpayments, or rebates to amounts owing

Effective April 1, 2007, any GST/HST refund, overpayment, or rebate owing to a person will not be paid to the person if the person has any amounts owing under the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, and the *Air Travellers Security Charge Act*. Instead, any refund or rebate owing to a person may be automatically offset against a debt the person owes to the Receiver General under any of these Acts. There is no legislative amendment needed to implement this change, as all these Acts have set-off provisions that were being administered manually by the CRA. For example, section 318 of the ETA allows the CRA to set off a GST/HST debt of a person against any amount payable to the person by the Receiver General. Conversely, section 224.1 of the *Income Tax Act* allows the CRA to set off an income tax debt of a person against any amount payable to the person by the Receiver General, such as a GST/HST refund or rebate.

Example — ABC Corporation (ABC) — GST/HST refund of net tax

2006	Effective April 1, 2007
<p>FACTS</p> <ul style="list-style-type: none"> • August 15, 2006 – GST/HST return for reporting period June 1 to June 30, 2006 filed, with net tax refund of \$10,000. • September 18, 2006 – Outstanding GST/HST return for its May 1 to May 31, 2006 reporting period filed, with net tax remitted. • September 25, 2006 – ABC's corporate tax return, overdue from the 2005 taxation year, filed. ABC has an unpaid balance of \$5,000 (including penalties and interest) with respect to this tax return. • September 28, 2006 – Refund paid. 	<p>FACTS</p> <ul style="list-style-type: none"> • August 15, 2007 – GST/HST return for reporting period June 1 to June 30, 2007 filed, with net tax refund of \$10,000. • September 18, 2007 – outstanding GST/HST return for its May 1 to May 31, 2007 reporting period filed, with net tax remitted. • September 25, 2007 – ABC's corporate tax return, overdue from the 2006 taxation year, filed. ABC has an unpaid balance of \$5,000 (including penalties and interest) with respect to this tax return. • September 28, 2007 – Refund paid
<p>LEGISLATION</p> <p><i>Restriction on payment of GST/HST refund</i> ETA, ss 229(2)</p> <ul style="list-style-type: none"> • No payment until GST/HST return for the May 1 to May 31, 2006 reporting period is filed. <p><i>Application of interest on refund</i> ETA, ss 229(3)</p> <ul style="list-style-type: none"> • Interest at prescribed rate of 3.5707% beginning 21 days after September 18, 2006, and ending the day the refund is paid. <p><i>Offset of refund</i> <i>Income Tax Act</i> s 224.1</p> <ul style="list-style-type: none"> • Possible manual offset of \$5,000 of the \$10,000 refund to pay ABC's income tax debt. 	<p>LEGISLATION</p> <p><i>Restriction on payment of GST/HST refund</i> ETA, ss 229(2)</p> <ul style="list-style-type: none"> • No payment until both the GST/HST return for the May 1 to May 31, 2007 reporting period and the corporate income tax return for 2006 are filed. <p><i>Application of interest on refund</i> ETA, ss 229(3)</p> <ul style="list-style-type: none"> • Interest at new prescribed rate of 7% (basic rate, plus 2%), beginning 30 days after August 15, 2007, and ending the day the refund is paid.* <p><i>*Interest is calculated on the \$10,000 refund until the offset of the \$5,000 income tax debt, then on the remaining \$5,000 refund ending the day the refund is paid.</i></p> <p><i>Offset of refund</i> <i>Income Tax Act</i> s 224.1</p> <ul style="list-style-type: none"> • Automatic offset of \$5,000 of the \$10,000 refund to pay ABC's income tax debt.

Penalties and interest

Interest and the 6% penalty imposed under section 280

Under section 280, an amount owing under the ETA prior to April 1, 2007, was subject to interest at a prescribed rate and a 6% penalty, beginning the day following the day the amount was due and ending the day the amount was remitted or paid.

Effective April 1, 2007, the 6% penalty under section 280 is eliminated. A new prescribed interest rate will be charged on amounts owing under the ETA as of April 1, 2007. Prior to April 1, 2007, the prescribed interest rate was determined by reference to the rate charged on 90-day Treasury Bills and adjusted quarterly. The *Interest Rate (Excise Tax Act) Regulations* will be amended so that, effective April 1, 2007, the prescribed interest rate charged on an overdue amount will be the basic rate, plus 4%. "Basic rate" will be defined in the regulations and will be based on the rate charged on 90-day Treasury Bills, adjusted quarterly, and rounded up to the nearest whole percentage point (expressed as a percentage per year).

Interest and penalty on late or deficient instalment payments

If a person failed to pay all or part of an instalment payment required to be paid under section 237 prior to April 1, 2007, subsection 280(2) imposed both a penalty of 6% per year and interest at the prescribed rate on the late or deficient instalment. Subsection 280(3) provided an offset mechanism that limited the total interest and

penalties payable in respect of instalments, so that interest and penalties under subsection 280(2) were only payable to the extent they exceeded interest plus the 6% penalty calculated by reference to overpaid or early instalments.

Subsection 280(3) has been amended to ensure that this mechanism will continue in that offset interest on overpaid or early instalment payments will be applied at the same rate as charged.

Non-deductibility of interest and the 6% penalty under section 280

Under new subparagraph 18(1)(t)(ii) of the *Income Tax Act*, the arrears interest paid or payable under section 280 will be non-deductible for income tax purposes. This amendment applies to taxation years that begin on or after April 1, 2007.

The *Income Tax Act* was amended in 2004 to provide that fines and penalties are not generally deductible. However, pending the outcome of ongoing work relating to standardized accounting under the various tax statutes, it was proposed at that time that this prohibition on the deductibility of penalties not apply to the 6% penalty imposed under section 280 of the *Excise Tax Act*, nor to prescribed penalties under the *Excise Act* and the *Air Travellers Security Charge Act*. However, now that this work has been completed, draft section 7309 of the *Income Tax Regulations* will be amended such that the 6% penalty paid or payable under section 280 of the *Excise Tax Act*, and the penalty interest under the *Air Travellers Security Charge Act*, will no longer be prescribed penalties. This amendment applies to taxation years that begin on or after April 1, 2007.

New section 280.1 penalty for filing GST/HST returns late (“failure to file” penalty)

New section 280.1 imposes a failure to file penalty on GST/HST returns filed late, with amounts owing. This penalty is equal to

- (a) 1% of the amount overdue on the return, plus
- (b) one quarter of the amount calculated in paragraph (a) times the number of complete months the return is overdue, to a maximum of 12 months.

This failure to file penalty applies in respect of:

- (a) any return that is required to be filed on or after April 1, 2007, and
- (b) any return that is required to be filed before that day if it is not filed on or before March 31, 2007, in which case the return is deemed to be required to be filed on or before March 31, 2007, for the purposes of calculating a penalty under this section.

Example — ABC Corporation (ABC) — Penalties and interest

2006	Effective April 1, 2007
<p>FACTS</p> <ul style="list-style-type: none"> • September 19, 2006 – GST/HST return for reporting period June 1 to June 30, 2006, due July 31, 2006, filed, with net tax overdue of \$10,000. ABC remits the \$10,000 net tax on September 19. 	<p>FACTS</p> <ul style="list-style-type: none"> • September 19, 2007 – GST/HST return for reporting period June 1 to June 30, 2007, due July 31, 2007, filed, with net tax overdue of \$10,000. ABC remits the \$10,000 net tax on September 19.

<p>LEGISLATION Application of penalty and interest</p> <p>ETA, ss 280(1)</p> <ul style="list-style-type: none"> • 6% penalty and prescribed interest* applies to \$10,000 net tax, starting August 1, and ending September 19. • 6% penalty and prescribed interest continues to accrue on the unpaid penalty and interest, until paid. <p><i>* Prescribed rate of interest on amounts owing for third quarter of 2006 = 3.5707%</i></p>	<p>LEGISLATION Application of penalty and interest</p> <p>ETA, s 280.1</p> <ul style="list-style-type: none"> • \$125 failure to file penalty applies [(1% x \$10,000) +(25% x \$100 x 1 month)] <p>ETA, ss 280(1):</p> <ul style="list-style-type: none"> • Interest at new prescribed rate* applies to the \$10,000 net tax starting August 1, and ending September 19, • Interest at new prescribed rate* starts to accrue on the unpaid interest daily, beginning September 20, until paid, and on the \$125 failure to file penalty starting August 1, and ending the day the penalty is paid. <p><i>* Prescribed rate of interest on amounts owing for third and fourth quarters of 2007 = 9%</i></p>
--	--

Example — XYZ Corporation (XYZ) — Penalties and interest

2006	Effective April 1, 2007
<p>FACTS</p> <ul style="list-style-type: none"> • September 18, 2006 - Outstanding GST/HST return for XYZ's monthly reporting period January 1 - January 31, 2006, due February 28, 2006 filed, with net tax overdue of \$10,000. XYZ remits the \$10,000 net tax on September 18. 	<p>FACTS</p> <ul style="list-style-type: none"> • September 18, 2007 - Outstanding GST/HST return for XYZ's monthly reporting period January 1 - January 31, 2007, due February 28, 2007 filed, with net tax overdue of \$10,000. XYZ remits the \$10,000 net tax on September 18.
<p>LEGISLATION Application of penalty and interest</p> <p>ETA, ss 280(1)</p> <ul style="list-style-type: none"> • 6% penalty and prescribed interest* applies to the \$10,000 net tax, starting March 1, 2006 until paid on September 18, 2006. • 6% penalty and prescribed interest continues to accrue on the unpaid penalty and interest until paid <p><i>* Prescribed rates of interest on amounts owing for first, second and third quarters of 2006 = 2.4333%, 3.6099%, and 3.5707%, respectively</i></p>	<p>LEGISLATION Application of penalty and interest</p> <p>ETA, ss 280(1)</p> <ul style="list-style-type: none"> • 6% penalty and prescribed interest* applies to the \$10,000 net tax, starting March 1, and ending March 31, 2007. <p>ETA, s 280.1</p> <ul style="list-style-type: none"> • \$225 Failure to file penalty applies [(1% x \$10,000) + (25% x \$100 x 5 months)] <p>ETA, ss 280(1)</p> <ul style="list-style-type: none"> • Interest at new prescribed rate** applies to the \$10,000 net tax, starting April 1, 2007 until paid on September 18, 2007. • Interest at the new prescribed rate** applies daily: <ul style="list-style-type: none"> ◦ to the unpaid 6% penalty and interest, starting April 1, 2007, ◦ to the unpaid \$225 failure to file penalty, starting April 2, 2007, and ◦ starting September 19, 2007, to the unpaid newly prescribed interest amount, ending the day the penalties and interest are paid. <p><i>* Prescribed rate of interest on amounts owing for first quarter of 2007 = 3.65%</i></p> <p><i>** Interest at new prescribed rate on amounts owing for second, third and fourth quarters of 2007 = 9%</i></p>

Minimum penalty and interest

Prior to April 1, 2007, if at any time a person remitted or paid all amounts payable under the ETA for a reporting period of the person, and the total of all penalties and interest under section 280 for the period immediately before

that time was less than \$25, under subsection 280(6), the CRA could write off and cancel the penalties and interest.

For reporting periods ending after March 2007, subsection 280(6) is replaced by section 280.2. If at any time a person remits or pays all amounts payable under the ETA for a reporting period of the person, and the total of failure to file penalties under section 280.1 and interest for the period immediately before that time is not more than \$25, the CRA may write off and cancel the penalties and interest.

Penalty imposed for the failure to file a return when required pursuant to a demand

Under section 283, any person who fails to file a return when required pursuant to a demand issued under section 282 is liable to a penalty. For any demand that the CRA serves on or after April 1, 2007, the penalty is equal to \$250. Prior to April 1, 2007, this penalty was equal to the greater of \$250 and 5% of the amount of tax payable or net tax remittable for the period or transaction designated in the demand that was unpaid or unremitted on the day that the return was due.

Extending the time for filing a GST/HST return, remitting net tax or paying tax

Under section 281, the CRA may extend the time for filing a return, or extend the time to remit net tax or to pay tax. Under this provision, for any extension of time that expired by March 31, 2007, the accrual of the 6% penalty under section 280 was suspended during the extension period. However, interest on any amount payable continued to accrue throughout the period of extension.

Section 281 was amended so that for any extension of time that expires on or after April 1, 2007, the failure to file penalty imposed under new section 280.1, or any interest imposed under section 280, will not apply in respect of the return or the amount required to be remitted or paid until after the extension period expires, and will only apply in respect of the period after the extension.

Cancelling or waiving penalties and interest

Taxpayer relief requests

The taxpayer relief provision was extended to apply to the failure to file penalty, and will be subject to a 10-year time limit. Effective April 1, 2007, under section 281.1, the CRA may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel all or any portion of the interest or penalty payable under section 280 in respect of the reporting period, or the penalty payable by the person under section 280.1 in respect of a return for the reporting period.

As well, effective April 1, 2007, in situations where the person has paid the assessed penalty and/or interest and this amount is subsequently cancelled, under new subsection 296(6.1), the CRA will refund the amount to the person, together with interest on that amount beginning on the day that is 30 days after the day the CRA receives the request for relief of penalty and/or interest, and ending on the day the refund is paid to the person.

However, under new subsection 296(7) this amount will not be paid to the person at any time until all returns of which the CRA has knowledge, and that are required to be filed at or before that time under the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, and the *Air Travellers Security Charge Act* have been filed.

Example — Mr. D — Cancellation of penalties and interest

2006	Effective April 1, 2007
<p>FACTS</p> <ul style="list-style-type: none"> • August 29, 2006 – Mr. D files a GST/HST return for the reporting period April 1 to June 30, 2006, due July 31, 2006, with net tax of \$1,000. Mr. D remits the net tax on August 29, 2006. • September 28, 2006 – Mr. D pays the penalty and interest assessed on the late-filed remittance. • October 25, 2006 – Mr. D requests cancellation of penalty and interest under the taxpayer relief provisions, since he was hospitalized July 10, for 7 weeks. • December 13, 2006 – The CRA approves Mr. D's request and refunds him the amount of penalty and interest paid, as well as the applicable interest on this amount. 	<p>FACTS</p> <ul style="list-style-type: none"> • August 29, 2007 – Mr. D files a GST/HST return for the reporting period April 1 to June 30, 2007, due July 31, 2007, with net tax of \$1,000. Mr. D remits the net tax on August 29, 2007. • September 28, 2007 – Mr. D pays the penalty assessed on the late-filed return and interest on the overdue remittance. • October 25, 2007 – Mr. D requests cancellation of penalty and interest under the taxpayer relief provisions, since he was hospitalized July 10, for 7 weeks. • December 13, 2007 – The CRA approves Mr. D's request and refunds him the amount of penalty and interest paid, as well as the applicable interest on this amount.
<p>LEGISLATION</p> <p><i>Application of penalty and interest</i> ETA, ss 280(1)</p> <ul style="list-style-type: none"> • 6% penalty and prescribed interest of 3.5707% applies to the \$1,000 net tax, from August 1, 2006 until paid on September 28, 2006. <p><i>Cancellation of penalty and interest</i> ETA, s 281.1</p> <ul style="list-style-type: none"> • 6% Penalty and interest under ss 280(1) <p><i>Date interest begins to accrue on the refund of the cancelled penalty and interest</i> ETA, ss 296(6)</p> <ul style="list-style-type: none"> • September 28 <p><i>Restriction on refund if Mr. D has outstanding returns?</i></p> <ul style="list-style-type: none"> • No <p><i>Is Mr. D's request subject to a time limitation?</i> ETA, s 281.1</p> <ul style="list-style-type: none"> • No* <p><small>* Note: If instead of filing his application for fairness on October 25, 2006, Mr. D files an application for taxpayer relief on or after April 1, 2007, with respect to the penalty and interest assessed on this return, the application will be subject to the 10-year limitation period.</small></p>	<p>LEGISLATION</p> <p><i>Application of penalty and interest</i> ETA, s 280.1</p> <ul style="list-style-type: none"> • \$10 failure to file penalty applies (1% x \$1,000) ETA, ss 280(1) • Interest of 9% (basic rate, plus 4%) on the \$1,000 net tax + \$10 failure to file penalty, from August 1 to August 29, 2007, and on unpaid amounts until September 28, 2007. <p><i>Cancellation of penalty and interest</i> ETA, s 281.1</p> <ul style="list-style-type: none"> • \$10 failure to file penalty under s280.1, and interest under ss 280(1) <p><i>Date interest begins to accrue on the refund of the cancelled penalty and interest</i> ETA, ss 296(6.1)</p> <ul style="list-style-type: none"> • 30 days after October 25 <p><i>Restriction on refund if Mr. D has outstanding returns?</i> ETA, ss 296((7)</p> <ul style="list-style-type: none"> • Yes <p><i>Is Mr. D's request subject to a time limitation?</i> ETA, s 281.1</p> <ul style="list-style-type: none"> • Yes. If Mr. D had not filed his application for taxpayer relief on October 25, 2007, he would have been required to file it within 10 calendar years after June 30, 2007.

Wash transactions

A "wash transaction" occurs where a supplier has failed to charge and collect GST/HST from a registrant that is entitled to a full input tax credit. A wash transaction may also occur within a closely related or associated group of persons where input tax credits are claimed by the wrong entity.

Where there is a wash transaction that is subject to both the 6% penalty and interest prior to April 1, 2007, the CRA will consider waiving or cancelling the portion of the 6% penalty and interest, payable at the time of assessment under section 280 of the ETA, that is in excess of 4% of the tax not properly collected by the supplier where certain conditions are satisfied.

For wash transactions that will be subject to interest at the new prescribed rate as of April 1, 2007, the CRA will consider waiving or cancelling the portion of that interest that is in excess of 4% of the tax not properly collected by the supplier, provided that certain conditions are satisfied.

The GST/HST Memoranda Series 16.3.1, *Reduction of Penalty and Interest in Wash Transaction Situations*, will be revised to take into account the new prescribed interest rate, and the removal of the 6% penalty imposed under subsection 280(1).

Due diligence defence

GST/HST Policy Statement P-237, *The Acceptance of a Due Diligence Defence for a Penalty Imposed Under Subsection 280(1) of the Excise Tax Act for Failure to Remit or Pay an Amount When Required*, outlines the position of the CRA on accepting a due diligence defence in respect of the 6% penalty imposed under subsection 280(1). This policy statement continues to be applicable to assessments for which the 6% penalty under subsection 280(1) applies. The policy statement will be revised to take into account that the due diligence defence may apply to the failure to file penalty under section 280.1 of the ETA.

Voluntary Disclosures Program

The Compliance Program Branch of the Canada Revenue Agency administers the Voluntary Disclosures Program (referred to as VDP), which provides protection from penalties and possible prosecution. In order for a disclosure of unremitted tax to be considered valid under this program, the disclosure must meet the following 4 conditions:

- it must be voluntary
- it must be complete
- it must involve a penalty, and
- it must include information that is over one year past due, or if less than one year past due, not initiated simply to avoid late filing or instalment penalties

As with all disclosures of unpaid income tax, a disclosure of unremitted GST/HST is valid, only if all these four conditions have been met. Therefore, if there is no penalty applicable to the GST/HST disclosure, such as the 6% penalty under section 280, the failure to file penalty under section 280.1, or the gross negligence penalty under section 285, the disclosure does not fall under the VDP program, and as a result, there is no relief from interest. This is consistent with disclosures of unremitted income tax on T1 and T2 income tax returns.

The Information Circular, *IC 00-1R — Voluntary Disclosures Program* is being revised and will reflect the above position with respect to GST/HST disclosures.

Dishonoured instruments

Under new section 280.3, when a financial instrument (e.g., a cheque) which is used to pay an amount payable or remittable under Part IX of the ETA, becomes dishonoured after March 2007, the charge that becomes payable under the *Financial Administration Act* (FAA) in respect of that financial instrument is deemed also 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 ETA. 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 ETA.

Misallocated payments

Under new subsection 221.2(2) of the *Income Tax Act*, any misallocated payment that becomes payable by a person under the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, or the *Excise Act, 2001*, will be

transferred to the appropriate account, on application by the person, effective the date of the original payment. This amendment applies to applications made on or after April 1, 2007.

Summary of Standardized Accounting Legislative Changes to Part IX of the ETA

	2006 and Prior Years	Effective April 1, 2007
Restrictions on payment of refunds	No refund until all GST/HST returns required to be filed for that reporting period and all previous reporting periods, have been filed. ETA, ss 229(2), 230(2)	No refund until all returns required to be filed under the <i>Excise Tax Act</i> , the <i>Income Tax Act</i> , the <i>Excise Act, 2001</i> and the <i>Air Travellers Security Charge Act</i> are filed. ETA, ss 229(2), 230(2)
Restrictions on payment of rebates	None	No rebate until all returns required to be filed under the <i>Excise Tax Act</i> , the <i>Income Tax Act</i> , the <i>Excise Act, 2001</i> and the <i>Air Travellers Security Charge Act</i> are filed. ETA, s 263.02
Date interest starts on a refund for a reporting period	The day that is 21 days after the later of: <ul style="list-style-type: none"> the day all GST/HST returns for that reporting period and previous reporting periods have been filed, and the day the GST/HST return in which the refund is claimed is filed. ETA, ss 229(3), ss 230(3)	The day that is 30 days after the later of: <ul style="list-style-type: none"> the day the GST/HST return is which the refund is claimed is filed, and the day following the last day of the reporting period. ETA, ss 229(3), ss 230(3)
Date interest starts on a rebate	21 days after an application for a rebate is filed under sections 257, 258 or 259, and in any other case, 60 days after the application is filed. ETA, ss 297(4)	30 days after the application for the rebate is filed. ETA, ss 297(4)
Prescribed interest rate on refunds and rebates	Rate charged on 90-day Treasury Bills, adjusted quarterly <i>Interest Rate (Excise Tax Act) Regulations</i>	Basic rate, (rate charged on 90-day Treasury Bills, adjusted quarterly, rounded up to the nearest whole percentage point, expressed as a percentage per year) plus 2% <i>Interest Rate (Excise Tax Act) Regulations (to be amended)</i>
Minimum interest paid on refunds and rebates	Interest of less than \$1 not paid ETA, ss 229(4), 230(4), 297(5)	Amounts of \$2 or less not paid ETA, ss 297.1(2)
Offsets of refunds, overpayments, or rebates to amounts owing	Possible manual offset (set-off provisions in all the Acts)	Automatic offset (set-off provisions in all the Acts)
Penalty and interest on amounts owing	6% penalty and interest at the prescribed rate, beginning the day after the day the amount is due, and ending the day the amount is paid or remitted. ETA, ss 280(1)	Interest at new prescribed rate equal to basic rate, plus 4%, beginning the day after the day the amount is due, and ending the day the amount is paid or remitted. ETA, ss 280(1)
Deductibility of interest and the 6% penalty for income tax purposes	Yes	No <i>Income Tax Act</i> , subpara.18(t)(ii), s 67.6, and proposed s 7309 of the <i>Income Tax Act Regulations</i>

	2006 and Prior Years	Effective April 1, 2007
Penalty for filing a return late with an unpaid or unremitted amount	None	Penalty equal to (a) 1% of the amount outstanding on the return, plus (b) one quarter of the amount calculated in (a) times the number of complete months, to a maximum of 12 months. ETA, s 280.1
Minimum penalty and interest	If the total of the 6% penalty and interest is less than \$25, the CRA may write off the amount. ETA, ss 280(6)	If the total of the failure to file penalty and interest is not more than \$25, the CRA may write off the amount. ETA, s 280.2
Penalty for failure to file a return pursuant to a demand to file	Penalty equal to the greater of: <ul style="list-style-type: none"> • \$250, or • 5% of the tax payable or net tax remittable ETA, s 283	Penalty of \$250 ETA, s 283
Extending the time for filing a return	6% penalty suspended during extension period, but interest under section 280 continues to accrue. ETA, ss 281(2)	Both the penalty under section 280.1 and the interest under section 280 are suspended during extension period. ETA, ss 281(2)
Cancellation of penalties and interest	Applies to 6% penalty and interest imposed under section 280. No time limit for applications to request cancellation of penalty and interest ETA, s 281.1	Extended to apply to failure to file penalty under section 280.1. 10 year window for applications to request cancellation of penalty and interest ETA, s 281.1
Day interest begins on refunds of paid penalty and interest	Begins the day the assessed penalty and interest was paid. ETA, ss 296(6)	Begins 30 days after the day the CRA receives the request for relief of penalty and interest ETA, ss 296(6.1)
Restriction on refunds of paid penalty and interest if returns outstanding	None	No refund until all returns required to be filed under the <i>Excise Tax Act</i> , the <i>Income Tax Act</i> , the <i>Excise Act, 2001</i> and the <i>Air Travellers Security Charge Act</i> have been filed. ETA, ss 296(7)
Interest charged on dishonoured instruments	No provision in the ETA	Yes ETA, s 280.1

Appendix — Frequently Asked Questions (FAQs)

1. Will a registrant be issued a statement notifying the registrant that a GST/HST refund is being held pending the filing of an outstanding return, and which return is outstanding [e.g. payroll or corporate tax return (T2)]?

A Notice of Assessment (NOA) will be issued to the registrant, which will indicate that a GST/HST refund is being held because the registrant is non-compliant in another program.

The following is an example of the wording that will be used on the NOA:

We have held your refund because you were non-compliant in the following program account(s):

Corporation Account BN 123456789 RC0001
Payroll Account BN 123456789 RP0001

2. A registered charity has filing divisions for the GST/HST. Will a GST/HST rebate owing to one division (RT0001) be offset by the GST/HST owing on another division's account (RT0002)?

No, the set-off mechanisms will not be applied from an account of one division to the account of another division of a registered charity. However the set-off mechanism will be applied within an account of a division of a registered charity.

For example, the Sudbury Camp, and the Moncton Camp are filing divisions of the Summer Camps of Canada (legal entity). Sudbury's GST/HST rebate claim will not be used to satisfy a debt of the Moncton Camp. However, a set-off of a GST/HST rebate will be done in Sudbury's account where Sudbury has a debt outstanding.

3. How does a person interpret the provisions of the *Income Tax Act* concerning the deductibility of interest and penalty for taxation years beginning before April 1, 2007 and for taxation years beginning on or after April 1, 2007?

Interest that accrues in a taxation year that commences prior to April 1, 2007 will be deductible. Interest that accrues in a taxation year that commences on or after April 1, 2007 will not be deductible. An amount paid or payable as interest under Part IX of the ETA that accrued in a taxation year commencing on or after April 1, 2007 is non-deductible even where such amount relates to a net amount of GST/HST pertaining to a taxation year of the taxpayer that began before April 1, 2007.

With respect to the 6% penalty, an amount paid or payable under any of the paragraphs 280(1)(a), 280(1.1)(a) and 280(2)(a) of the ETA relating to a GST/HST liability that arose in the course of earning income from business property, and pertains to an amount of GST/HST due and outstanding before April 1, 2007 is deductible in that taxation year, but if imposed in a subsequent taxation year, may alternatively be deducted in that subsequent year.

4. a) Will an automated hold be placed on a refund (or rebate) because of an outstanding corporate income tax return (T2) when a particular corporation is exempt from paying income tax under subsection 149(1) of the *Income Tax Act*?

In general, the ETA prohibits the payment of rebates and refunds to a person until all returns of which the CRA has knowledge that are required to be filed under the *Income Tax Act*, the *Excise Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act* have been filed. If the corporation is required to file a corporate income tax return, then the refund will be held until such time as the corporate income tax return is filed. However, registered charities, Hutterites, and provincial crown corporations are not subject to refund holds because of unfiled corporate income tax returns (T2s).

The CRA has implemented an administrative position regarding outstanding corporate income tax returns (T2s) for the MUSH sector (Municipalities, Universities, Schools and Hospitals), non-profit organizations, federal crown

corporations and Indian Bands that are exempt from paying tax under subsection 149(1) of the *Income Tax Act*. These entities will not have their refunds or rebates automatically held because of outstanding corporate income tax returns for taxation years ending on or before March 31, 2008. However, failure by these entities to file corporate income tax returns by their due dates for taxation years ending April 1, 2008, and for subsequent taxation years, will result in automated holds being placed on their refunds or rebates.

4. b) Will an automated hold be placed on a charity's or a non-profit organization's refund (or rebate) because of an outstanding information return that the charity is required to file under subsection 149.1(14) of the *Income Tax Act*, or that the non-profit organization is required to file under subsection 149(12) of that Act?

A registered charity's or non-profit organization's refund or rebate will not be automatically held if the registered charity or non-profit organization has an outstanding information return that is required to be filed under either subsections 149(12) or 149.1(14) of the *Income Tax Act*

5. Will the failure to file penalty under section 280.1 apply under the following circumstances?

- **A GST/HST return is filed on time. Later, an amended return is filed with an additional amount of net tax owing.**
- **A registrant filed a nil GST/HST return by the due date and during an audit a net tax assessment is raised.**

Filing of a nil return, or other return, by the due date will not result in the failure to file a return penalty being imposed. However, interest will apply to subsequent adjustments generated by the registrant, or as the result of an audit. The failure to file penalty will not be applied automatically in these circumstances.

Should the facts during the audit show that the registrant intentionally filed the nil return, or other return, on time to avoid the failure to file penalty, then the failure to file penalty will be assessed. Also, a penalty could be assessed under section 285 of the ETA for knowingly filing a return with incorrect information

Imposition of penalties will be based on the facts of a particular case.

6. Will the CRA's wash transaction policy continue to apply such that any interest in excess of 4% will be waived pursuant to section 281.1 of the ETA?

The wash transaction policy will continue to be applied after March 31, 2007, where the policy requirements are met. Under this policy, the interest in excess of 4% may either be waived or cancelled under section 281.1 of the ETA.

7. How will the penalty and interest rules be applied for GST/HST assessments that straddle the April 1, 2007 implementation date?

The 6% penalty and interest will apply on amounts owing prior to April 1, 2007.

The new interest rate will apply to the amounts still outstanding (including the interest and 6% penalty) starting on April 1, 2007 and ending when the amount is paid or remitted.

The new failure to file penalty will also apply to any return that is required to be filed on or after April 1, 2007, and any return that is required to be filed before that date if it is not filed on or before March 31, 2007.

8. Will the failure to file penalty under section 280.1 of the ETA apply to other GST/HST returns, such as the GST60, *GST/HST Return for the Acquisition of Real Property*, the GST 59, *GST/HST Return for Imported Taxable Supplies*, and the GST489, *Return for Self-Assessment of the Provincial Part of Harmonized Sales Tax (HST)*?

No, based on the legislative provisions, the failure to file penalty will not apply to these returns.

9. What is the date that an amount of a GST/HST refund or rebate is automatically applied to set off a debt owing from the *Income Tax Act*, the *Excise Act, 2001* or the *Air Travellers Security Charge Act*?

Once a refund or rebate amount is approved, it will be available for offset against any other liabilities a person may have with the CRA effective the later of:

- the date the return, application or other required documentation giving rise to the credit is filed with the CRA; and
- the date the return, application or other required documentation giving rise to the debt is filed with the CRA.

10. Will Corporation A's net GST/HST refund be applied to its corporate income tax debt before being used to offset Corporation B's and C's net GST/HST owing in the following scenario?

- Corporations A, B, and C file their GST/HST returns jointly under subsection 228(7) of the ETA.
- The Coordinator of the group files the following GST/HST returns for one reporting period:
 - Corporation A - \$10,000 net GST/HST refund
 - Corporation B - \$2,500 net GST/HST owing
 - Corporation C - \$1,500 net GST/HST owing
- Corporations A, B, and C have outstanding amounts owing on their corporate income tax accounts.
- The Coordinator requests the CRA to apply the net GST/HST refund of Corporation A against the net GST/HST owing for Corporations B and C.

Yes, Corporation A's net GST/HST refund will be applied first to its corporate income tax debt. Any remaining credit from Corporation A's net GST/HST refund will then be applied to offset Corporation B's and C's net GST/HST owing. The CRA will not use the remaining balance of Corporation A's net GST/HST refund to set off against Corporation B's or C's corporate income tax debts.

11. Will the failure to file penalty apply in the situation where three corporations who file their returns jointly under subsection 228(7) file their returns late, and the net GST/HST refund of one corporation is greater than the net GST/HST owing of the other two?

Situation:

- Corporations A, B and C file their GST/HST returns jointly under subsection 228(7) of the ETA. The coordinator of the group files the following three GST/HST returns for the reporting period ending June 30, 2007:
 - Corporation A – \$10,000 net GST/HST refund
 - Corporation B – \$2,500 net GST/HST owing
 - Corporation C – \$1,500 net GST/HST owing
- The returns, which were due on July 31, 2007, were not mailed until August 15, 2007.
- There were no outstanding amounts owing on Corporation A's account and, other than the GST/HST, no amounts were outstanding for Corporations B and C.
- The coordinator requests the CRA to apply the net GST/HST refund of Corporation A against the net GST/HST owing for Corporations B and C.

The failure to file penalty under section 280.1 of the ETA will apply to the returns of Corporations B and C, since their returns were mailed late with overdue net GST/HST. The net GST/HST owing on both these returns is considered remitted, according to subsection 334(1), on the date Corporation A's return with its net GST/HST refund was mailed, August 15.

According to the formula in section 280.1, Corporation B will be liable for a penalty of \$25 (1% of \$2,500 of net GST/HST owing) and Corporation C will be liable for a penalty of \$15 (1% of \$1,500 of net GST/HST owing). Corporation A, although its return was filed late, will not be assessed the failure to file penalty since it is in a net tax refund position.

12. Will the failure to file penalty apply in the situation where three corporations who file their returns jointly under subsection 228(7) file their returns late, but make the payment for the net amount of GST/HST owing by the due date?

Situation:

- **Corporations A, B and C file their GST/HST returns jointly under subsection 228(7) of the ETA. The coordinator of the group files the following three GST/HST returns for the reporting period ending June 30, 2007:**
 - Corporation A – \$1,000 net GST/HST refund**
 - Corporation B – \$2,500 net GST/HST owing**
 - Corporation C – \$1,500 net GST/HST owing**
- **The returns, which were due on July 31, 2007, were not mailed until August 15, 2007. However, the net payment of \$3,000 was made on July 31, 2007.**
- **There were no outstanding amounts owing on Corporation A's account and, other than the GST/HST, no amounts were outstanding for Corporations B and C.**
- **The coordinator requests the CRA to apply the net GST/HST refund of Corporation A against the net GST/HST owing for Corporation B and to apply \$1,500 of the \$3,000 payment against the balance of Corporation B's net GST/HST owing, and the remaining \$1,500 to Corporation C's GST/HST net tax owing.**

Anything sent by first class mail is deemed to be received on the date it is mailed, according to subsection 334(1) of the ETA. However, according to subsection 334(2), a payment is deemed to be made on the day it is received by the Receiver General.

Therefore, pursuant to the coordinator's request, \$1,500 of the \$3,000 payment made on July 31, 2007, is deemed to have been a full payment against Corporation C's net GST/HST owing on that date. The remaining \$1,500 is also deemed to have been a payment on that date against Corporation B's net GST/HST owing of \$2,500. The balance of Corporation B's net GST/HST owing, \$1,000 (\$2,500-1,500), is not deemed to have been paid until such time as Corporation A's GST/HST return for the net GST/HST refund is mailed on August 15, 2007.

The failure to file penalty under section 280.1 of the ETA will apply to the return of Corporation B, since its return was mailed late with an overdue net GST/HST of \$1,000. According to the formula in section 280.1, Corporation B will be liable for a penalty of \$10 (1% of \$1,000 of net GST/HST owing).

Although Corporation A's and Corporation C's GST/HST returns were both filed late, neither corporation will be assessed a failure to file penalty. Corporation C's net GST/HST owing of \$1,500 was paid by its due date, July 31, 2007. Corporation A will not be assessed the failure to file penalty since it is in a net tax refund position.

Enquiries

If you wish to make a technical enquiry on the GST/HST by telephone, please call one of the following toll-free numbers:

1-800-959-8287 (English service)

1-800-959-8296 (French service)

General enquiries about the GST/HST should be directed to Business Enquiries at one of the following toll-free numbers:

1-800-959-5525 (English service)

1-800-959-7775 (French service)

If you are located in Quebec, please call the following toll-free number:

1-800-567-4692 (Revenu Québec)

All GST/HST Technical Information Bulletins as well as other publications are available on the CRA Web site at www.cra-arc.gc.ca.