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TAX FAIRNESS

Taxpayers are renowned for complaining that they have been treated unfairly by the revenue authorities. In May of 1991, Otto Jelinek, the Minister of National Revenue, introduced draft legislation, purportedly to make the Canadian Income Tax Act fairer to taxpayers. The draft legislation proposes to give the Minister discretion to reassess a taxpayer outside of the normal reassessing period or to refund an overpayment of tax where a taxpayer fails to file a tax return within the normal period that he is required to do so. It also provides for an extension period where a Notice of Objection is filed late. The Minister is given discretion to cancel or waive any penalties or interest charges where they arise out of extraordinary circumstances beyond the control of the taxpayer. In addition, it permits taxpayers to make certain elections outside of the normal time limits or to amend or revoke elections which have been made.

Getting Refunds on Returns Which Were or Should Have Been Filed More than Three Years Ago

Prior to the proposed changes, the Tax Act did not provide for reassessments on returns that were assessed more than three years before. The Fairness Package will provide individuals and testamentary trusts with the right to apply to have their taxes reassessed for tax years outside of the normal reassessment period. Normally, tax returns will not be reassessed more than three years from the date of mailing of a Notice of Assessment. Upon receiving the application, the Minister may exercise his discretion to review tax returns for years as far back as 1985. The explanatory notes in the Fairness Package state that the amendments will allow taxpayers to obtain refunds in situations where there has been an overpayment of taxes as a result of payroll deductions by an employer, where refundable tax credits such as the Child Tax Credit, Federal Sales Tax Credit, Goods and Services Tax Credit or Provincial Tax Credits have not been claimed, or where a taxpayer who previously filed a tax return discovers that a deduction or non-refundable tax credit had been missed.

The Department will not increase deductions such as capital cost allowance to generate a refund. There is a catch, though. If a taxpayer

owes taxes for 1985 or later the amount of any refund he may be granted will be applied against the outstanding indebtedness.

The proposals also allow individuals and testamentary trusts to apply to submit unfiled tax returns where more than three years have passed from the end of the taxation year. The Minister will be publishing guidelines which set out when and how its discretion will be exercised. A taxpayer's application will not necessarily be granted under these provisions. She or he must be able to convince the Minister of the merits of the claim.

Waiving Penalty or Interest

The Fairness Package will grant the Minister discretion to waive or cancel any penalty or interest charged under the Tax Act. This change will apply for all taxpayers and partnerships, not just individuals and testamentary trust, and will apply in respect of 1985 and the subsequent taxation years.

The taxpayers will have to apply in writing for this relief, showing that his or her failure to file or pay on time was due to extraordinary circumstances beyond his or her control. The explanatory notes to the Fairness Package set out a number of examples of when the Minister would grant the application. Such circumstances include natural disasters such as flood or fire. they include human-made ones like civil disturbance, strike, recent serious illness or accident which prevented or delayed the filing of a return or the making of a payment. Another occasion when an application may be granted is where a taxpayer received erroneous information from Revenue Canada in the form of incorrect written answers of errors in published information.

The Minister will require a taxpayer to take a reasonable amount of care in attempting to comply with the requirements and to remedy the omission or delay within a reasonable time after becoming aware of it. The penalty or interest will not be cancelled where the taxpayer has been neglectful.

The implementation of any tax saving strategy is based on your personal financial situation. Professional advice should be obtained before implementing any of the suggestions contained herein.

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