



VIA E-MAIL

January 21, 2025

Ms. Cathy Hawara
Assistant Commissioner, Compliance Programs Branch
Canada Revenue Agency

Re: Request to grant interest and penalty relief for taxpayers that file under the existing capital gains tax legislation

Dear Ms. Hawara,

We are writing with respect to the capital gains inclusion rate legislation that was proposed in a Notice of Ways and Means Motion on September 23, 2024. The accompanying bill (*An Act to amend the Income Tax Act and the Income Tax Regulations*) was not introduced in Parliament prior to prorogation. We are aware that the Canada Revenue Agency (**CRA**) intends to administer the proposed capital gains legislation, and that new forms are expected to be issued by January 31, 2025.¹

By way of background, the Portfolio Management Association of Canada (**PMAC**) represents over 330 asset management firms from across Canada that collectively manage over \$4 trillion in assets for pension plans, endowments, individual and group RSPs, and private client portfolios.

In light of the prorogation of Parliament and the upcoming federal election, there is significant uncertainty regarding the likelihood that the tax bill will be introduced or passed. As a result, many taxpayers may reasonably decide to file and pay taxes under the existing capital gains legislation.

¹ <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-income/line-12700-capital-gains.html>

The CRA's Income Tax Audit Manual at section 12.3.5 *Guidelines to deal with proposed legislative amendments* states:

When a taxpayer files a return based on proposed legislation, do not reassess the taxpayer to deny a benefit only because the proposed legislation has not been enacted. *On the other hand, if the proposed legislation is not beneficial to a taxpayer, the CRA cannot require them to file on the basis of proposed legislation.* In such cases, inform the taxpayer that they are responsible to apply the legislation according to the enacted legislation after royal assent, and that they may be subject to interest on amounts owing. [emphasis added]

In the current circumstances, we do not believe that taxpayers should be penalized for filing on the basis of the existing legislation. Although the CRA statement referenced above indicates that "Arrears interest and penalty relief, if applicable, will be provided for those corporations and trusts impacted by these changes that have a filing due date on or before March 3, 2025", we are of the view that all individual, corporate and trust taxpayers should be included in such relief, regardless of the applicable filing date.

We request that CRA provide interest and penalty relief in accordance with subsection 220(3.1) of the *Income Tax Act*, with respect to any increased tax liability that may result if the proposed changes are eventually enacted, for taxpayers that decide to file under the existing capital gains legislation. This relief could be time-limited, as appropriate. We also ask that CRA issue a public statement to this effect.

In our view, this is a reasonable course of action that will provide fairness to taxpayers, will eliminate some of the uncertainty and risk to taxpayers and their advisers, and may avoid the re-filing of amended tax slips and information, which will be costly from an administrative and operational perspective for both taxpayers and CRA.

We would be pleased to discuss this further with you or answer any questions you may have. Please contact Katie Walmsley at kwalmsley@pmac.org or (416) 560-9419 or Victoria Paris at vparis@pmac.org or (416) 802-4347.

Yours very truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

"Katie Walmsley"

Katie Walmsley

President

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Chair of PMAC Taxation Sub-Committee, and
Managing Director, Head of Taxation and Fund Governance, RBC Global Asset Management Inc.

cc. Bob Hamilton, Commissioner,
Brigitte Diogo, Deputy Commissioner,
François Boileau, Taxpayers' Ombudsperson,
Christophe Cinqmars-Viau, Senior Policy Advisor, Office of the Minister of Finance,