Statute - Barred Periods

References: sections 75, subsections 80(10), 80(11), 80(15), 80(16), 80(20), 80(21), 80(25), 80(26), 80(27) and 80(28)

Application

This bulletin replaces Interpretation Bulletin 2620 originally published July, 1995.

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

General

1. The purpose of this bulletin is to describe the provisions of the CTA under which the Minister of Finance for Ontario (Minister) can issue a reassessment.
2. This bulletin also discusses the Branch's policy regarding the acceptance of revisions to discretionary deductions requested by taxpayers.

Reassessments

Normal Reassessment Period

3. Subsection 80(11) contains the legislation regarding the issuance of assessments and reassessments. Generally, under clause 80(11)(c), a reassessment must be issued before the expiry of the "normal reassessment period". The "normal reassessment period" is defined in subsection 80(10). For a Canadian-controlled private corporation (CCPC), it is the period that ends four years after the day of mailing of an original assessment. For a non-CCPC and a mutual fund corporation, it is the period that ends five years after the day of mailing of an original assessment.

Special Circumstances

4. A reassessment for a particular year can be issued at any time under clause 80(11)(a) where the taxpayer has:
   - been negligent or fraudulent in preparing the tax return
   - failed to deliver a return
   - claimed a deduction under paragraph 20(1)(s) of the *Income Tax Act* (Canada) (ITA), or
   - filed a waiver with either this Ministry or the Canada Customs and Revenue Agency (CCRA).
5. Under subsection 80(12), the Minister may not issue an assessment later than one year from the date that a corporation files with the Ministry a Notice of Revocation of Waiver or a copy of the Notice of Revocation of Waiver filed with CCRA.

Extension of the Normal Reassessment Period- Subsection 80(11)(b)

6. Clause 80(11)(b) increases the time period for reassessment by three years beyond the normal reassessment period in the following situations:
   - a loss has been applied from a subsequent taxation year
   - it is necessary to reassess a year as a consequence of a transaction involving a non-resident person with whom the company was not dealing at arm's length
   - it is necessary to reassess a year due to an additional payment or reimbursement of any income or profits tax to or by a foreign government
   - the inter-provincial anti-avoidance rules in subsections 5.1(2), 5.1(5), 29.1(6) or 31.1(6) apply to the corporation or to a partnership of which the corporation is a member, in respect of a disposition or acquisition of property in the taxation year
   - the subsection 34(10.3) anti-avoidance rule for a designation under paragraph 111(4)(e) of the ITA when a corporation ceases to be an Ontario corporation, applies to the corporation for the taxation year, or
   - the anti-avoidance of provincial tax rules, for discretionary deductions and reserves under section 5.2 or 5.3, apply to the corporation for the taxation year.

Rationale for Extension of the Normal Reassessment Period

7. The purpose of the 3-year extension beyond the normal reassessment period is demonstrated by the example in paragraphs 8 and 9.

8. A CCPC incurs a loss of $10,000 in the 1997 taxation year. The loss is carried back to its 1994 taxation year which was originally assessed in mid-1995. In 2001, a reassessment reduces the loss incurred in 1997 to $5,000.

9. If an extension beyond the normal reassessment period was not available, the 1994 year could not be reassessed to revise the loss since it would have been statute-barred in mid-1999 (four years after the original assessment date). However, due to subclause 80(11)(b)(i), the 1994 year remains open an additional three years to allow the loss carried back from 1997 to be reduced.

10. Please refer to the flowchart in paragraph 32 for time periods applicable to issuing reassessments.

Limitations on 80(11)(b)

11. Although the reassessment period is increased by three years, subsection 80(15) limits the nature of any such reassessment to adjustments referred to in subclauses 80(11)(b)(i) to 80(11)(b)(vi), described above in paragraph 6. For example, where a loss was previously carried back to a prior taxation year, a subsequent reassessment can be issued under subclause 80(11)(b)(i), but only for purposes of revising the amount of the loss.

12. However, only the amount of the loss carried back can be reassessed, as stipulated by subsection 80(15). In addition, the three year extension provided by subclause 80(11)(b)(i) does not give the Minister an extra three years beyond the normal reassessment period in which to apply a loss to a prior taxation year, where none was previously applied.

Reassessment for Loss Carried Back

13. Subsection 80(16) requires the Minister to reassess a taxation year to apply a loss where a corporation has delivered the tax return for the year as required by section 75 and has requested in writing that a loss from a subsequent year be applied. Subsection 80(16) gives the corporation three years from the date a return is required to be filed for a particular year to request a loss be carried back to that particular year, i.e. three and one half years after the end of the taxation year. Administratively, the Branch will reassess a taxation year regardless of when the loss carry back request is made as long as the taxation year to which the loss is being applied is open for reassessment. Loss carry back requests to a taxation year that is statute-barred will not be processed. This policy also applies to requests for revisions to losses previously carried back.

Consequential Adjustments

14. Occasionally, a balance (as defined in paragraph 17) for a year (particular year) is adjusted as a result of either a reassessment or a decision in relation to an objection or appeal and that adjusted balance affects another taxation year which is statute-barred. When this occurs, subsection 80(20) provides a means to adjust the balance in the otherwise statute-barred year (other year). The subsection permits the Minister to make the consequential adjustment to the other year where:

    - the CTA requires an inclusion or a deduction in computing the balance in the other year, and
    - the inclusion or deduction is reasonably related to the assessment of the particular year.

15. In addition, subsection 80(20) requires the Minister to make the adjustment to the other taxation year where the corporation has requested, in writing, that the adjustment be made to the other taxation year. The Minister must make the adjustment to the other taxation year by the later of:

    - the expiration of the normal reassessment period in respect of the other taxation year, and
    - the period of one year after the day on which all rights of objection and appeal have expired for the particular taxation year.

16. Unlike the federal equivalent, subsection 152(4.3) of the ITA, subsection 80(20) does not restrict the Minister to assessing only a subsequent taxation year. The other year can be a prior year as well as a subsequent year.

17. Subsection 80(21) provides that for the purposes of subsections 80(20) “a balance of a corporation” for a taxation year includes:

    - income
    - taxable income
    - taxable income earned in Canada
    - taxable paid-up capital
    - taxable paid-up capital employed in Canada
    - a loss of a corporation for the year, and
    - an amount payable by or owing to the corporation under the CTA for a year.

Example - Consequential Adjustments

18. The significance of subsection 80(20) is illustrated by the following example:

    Assume that a CCPC’s December 31, 1993 taxation year was assessed on August 15, 1994. This taxation year would normally become statute-barred on August 16, 1998. The December 31, 1994 taxation year was assessed on August 18, 1995 and became statute-barred August 19, 1999. A waiver was filed to keep the 1993 taxation year open for matters specified in the waiver. The 1993 taxation year was reassessed for capital cost allowance (CCA) adjustments on February 3, 2000.

Example - Consequential Adjustments (continued)

19. The reassessment revising the corporation's undepreciated capital cost (UCC) balance at the end of the 1993 taxation year has consequences for the same balance in the 1994 taxation year. The Minister can reassess the 1994 taxation year to adjust the corporation's CCA claim and UCC balance even though a waiver was not filed for 1994. The Minister's ability to reassess the 1994 taxation year under subsection 80(20) is restricted in this case to consequential CCA adjustments stemming from the changes to the UCC balance in 1993.

20. The Minister has until the later of the following to reassess the 1994 taxation year:

    - the end of the normal reassessment period for 1994 which is August 18, 1999, or
    - one year after the day all rights to objection and appeal have expired (August 3, 2001) for the 1993 reassessment.

21. In this example an assumption is made that the corporation did not file a notice of objection for the 1993 taxation year. Accordingly, the Minister has until August 3, 2001 to reassess the 1994 taxation year. If the corporation had filed a notice of objection, the Minister's right to reassess 1994 would have been extended to the time when the corporation's right to subsequently file an appeal had expired.

Extension Where an Assessment is Issued by Another Taxing Authority

22. Subsections 80(25) to 80(28) apply in respect of assessment actions carried out by other Canadian taxing authorities for which notices are mailed or otherwise issued to a corporation after December 9, 1996.

23. Subsection 80(25) allows the Minister to reassess a corporation beyond the normal reassessment period in respect of any item that can be reasonably regarded as relating to an assessment action carried out by another taxing authority. The Minister can reassess up until the later of:

    - the latest day on which a reassessment, additional assessment or assessment may be made under clause 80(11)(b) or (c), and
    - unless a waiver has been filed under subsection 80(26), the day that is 365 days after the date the Minister receives notification of the assessment action carried out by the taxing authority.

24. The corporation may file a waiver with the Minister under subsection 80(26), in a form approved by the Minister, that permits the Minister to assess, reassess or make additional assessments under subsection 80(25) after the last date on which the Minister could otherwise assess, reassess, or make additional assessments under that subsection. The waiver must be filed on or before the last day determined by subsection 80(25).

25. Subsection 80(26) also permits the corporation to file, in a form approved by the Minister, a revocation of the waiver previously filed under the subsection. Where a corporation files such a revocation, the Minister is limited by subsection 80(27) to issuing a notice of assessment or reassessment within one year from the date of the filing of the revocation.

26. Subsection 80(28) defines the phrases "an assessment action carried out by a taxing authority" and "the date of notification of an assessment action carried out by a taxing authority" for purposes of subsection 80(25).

27. "An assessment action carried out by a taxing authority" means one or more of the following actions carried out by the Minister of National Revenue or by a province or territory of Canada which imposes a tax similar to a tax imposed under the CTA:

    - an assessment, reassessment or additional assessment of tax, interest or penalties
    - a determination or redetermination of a loss
    - the confirmation of an assessment, reassessment or additional assessment of tax interest or penalties or of a determination or redetermination of a loss, and
    - a determination of the corporation's entitlement to a refundable tax credit or other refund.

Extension Where an Assessment is Issued by Another Taxing Authority

28. "The date of notification of an assessment action carried out by a taxing authority" means the day that is the later of:

    - the day the Minister receives notification from the corporation of all items that affect the corporation's liability or potential liability under the CTA which can reasonably be regarded as relating to the assessment action, or if the Minister does not receive notification from the corporation, the day the Minister receives notification of the assessment action from the taxing authority, and
    - the ninetieth day after the day of mailing of a notice of the assessment action by the taxing authority to the corporation.

Revisions to Discretionary Deductions

Revisions to Discretionary Deductions

29. Corporations often request amendments to their CCA claims or other discretionary deductions to either increase or decrease a non-capital loss. Any changes to the CCA claimed affects the closing balance of the UCC. UCC is a component in the net book value (NBV)/UCC comparison for capital tax purposes. Where the CCA claim increases, there is a consequential decrease to capital tax. Conversely, where the CCA claim decreases, there is a consequential increase to capital tax.

30. Where a corporation makes a request to revise the amount of the CCA claim or other discretionary deduction for the taxation year, the Branch will accept the amendment in the following cases:

    - **Where there is income tax payable**:
    The Branch will allow revisions to a discretionary deduction *if the time period for filing a notice of objection* (i.e., within 180 days after the mailing of a notice of assessment) *has not expired.* In this case, both the income tax and the capital tax will be adjusted, either upwards or downwards.

    - **Where there is no income tax payable:**
    The Branch will accept revisions to discretionary deductions for a particular tax year *provided the year is not statute-barred and there is no change to income tax payable for that year or any other year for which the time period for filing a notice of objection has expired.* The Branch's policy with respect to capital tax is as follows:

    i) not to adjust capital tax downwards since allowing the amendments should not result in a decrease of taxes previously assessed, and

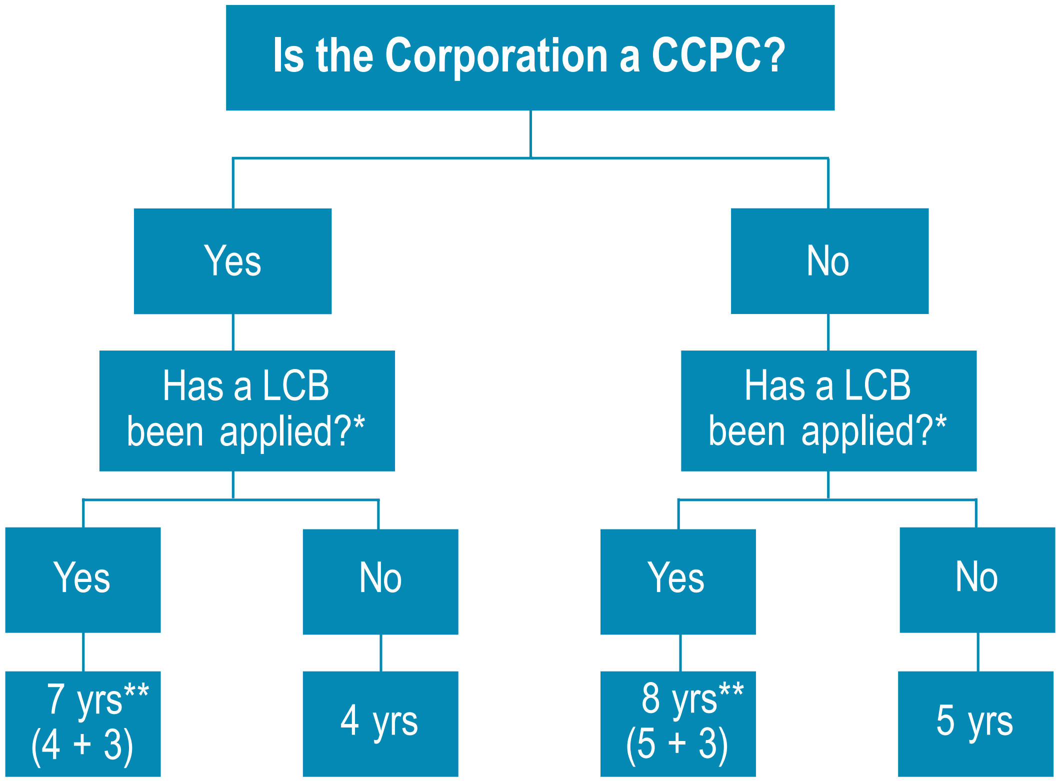
    ii) to make all necessary upward adjustments to capital tax.

31. **Where the year is already statute-barred:**
The Branch will not make the requested adjustments where the taxation year is statute-barred. Where the year is statute-barred, the Branch cannot make upward adjustments to capital tax, to reflect decreased CCA claims. Although an increase in a CCA claim would result in a decrease to capital tax, the Branch will not accept requests for increases to CCA claims in statute-barred years. The policy applies to all corporations in statute-barred years regardless of whether the request is to increase or decrease the CCA claim.

Time Limit for Issuing a Notice of Reassessment - Flowchart

Time Limit for Issuing a Notice of Reassessment - Flowchart

32. This flowchart assumes there has been no fraud, negligence, waivers filed or failure to file a return which would keep a taxation year open indefinitely. It applies for taxation years commencing after June 28, 1988.



* In addition to a Loss Carry Back (LCB), has the year been assessed for any other item under clause 80(11)(b), i.e., transactions with a non-arm's length non-resident or payments to or from a foreign government?

** These years are open only for revising the amount of the loss or any other item reassessed under clause 80(11)(b), as per subsection 80(15) (see paragraph 11).

For More Information

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