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Practitioner's

Income Tax Act

2018 . 53rd Edition

The **Income Tax Act** and **Income Tax Application Rules**
fully annotated, as amended to **February 6, 2018**

Consolidated with

all draft legislation to the same date;

other proposed amendments

plus

The **Income Tax Regulations** and all draft regulations to February 6, 2018;
Remission Orders; Canada-US and Canada-UK tax conventions and Protocols;
Canada-US Tax Information Exchange Agreement (FATCA); Tax Tables;

Interpretation Act; Topical Index

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jointly and severally, or solidarily, liable with the particular person to pay any interest payable by the particular person pursuant to subsection (8.3) in respect thereof.

Related Provisions: 227(10) — Assessment.

Notes: See Notes to 216(1) re interest applying under 227(8.1) when Part XIII liability is eliminated by filing s. 216 return.

227(8.1) amended by 2002-2013 technical bill (Part 4 — bijuralism), effective June 26, 2013, to add “or solidarily”.

(8.2) Retirement compensation arrangement deductions — Where a person has failed to deduct or withhold any amount as required under subsection 153(1) in respect of a contribution under a retirement compensation arrangement, that person is liable to pay to Her Majesty an amount equal to the amount of the contribution, and each payment on account of that amount is deemed to be, in the year in which the payment is made,

(a) for the purposes of paragraph 20(1)(r), a contribution by the person to the arrangement; and

(b) an amount on account of tax payable by the custodian under Part XI.3.

Related Provisions: 147.1(3) — Deemed registration; 153(1)(p) — Withholding required; 227(10) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 252.1 — Where union is employer.

(8.3) Interest on amounts not deducted or withheld — A person who fails to deduct or withhold any amount as required by subsection 135(3), 135.1(7), 153(1) or 211.8(2) or section 215 shall pay to the Receiver General interest on the amount at the prescribed rate, computed

(a) in the case of an amount required by subsection 153(1) to be deducted or withheld from a payment to another person, from the fifteenth day of the month immediately following the month in which the amount was required to be deducted or withheld, or from such earlier day as may be prescribed for the purposes of subsection 153(1), to,

(i) where that other person is not resident in Canada, the day of payment of the amount to the Receiver General, and

(ii) where that other person is resident in Canada, the earlier of the day of payment of the amount to the Receiver General and April 30 of the year immediately following the year in which the amount was required to be deducted or withheld;

(b) in the case of an amount required by subsection 135(3) or 135.1(7) or section 215 to be deducted or withheld, from the day on which the amount was required to be deducted or withheld to the day of payment of the amount to the Receiver General; and

(c) in the case of an amount required by subsection 211.8(2) to be withheld, from the day on or before which the amount was required to be remitted to the Receiver General to the day of the payment of the amount to the Receiver General.

Related Provisions: 221.1 — Application of interest where legislation retroactive; 227(8.1) — Joint and several liability; 227(10) — Assessment; 227(10.2) — Joint and several liability re contributions to RCA; 248(11) — Compound interest; 252.1 — Where union is employer.

Notes: See Notes to 227(8) and (8.4).

227(8.3) amended by 2006 Budget first bill (implementing a 2005 Budget proposal), effective 2006, to add references to 135.1(7).

Reference to 211.8(2) added to opening words of 227(8.3), and para. (c) added, by 1996 Budget, effective April 25, 1997 (Royal Assent).

227(8.3) amended by 1991 technical bill, effective July 14, 1990, to refer to 135(3).

Regulations: 4301(a) (prescribed rate of interest).

Information Circulars: 07-1R1: Taxpayer relief provisions.

(8.4) Liability to pay amount not deducted or withheld — A person who fails to deduct or withhold any amount as required under subsection 135(3) or 135.1(7) in respect of a payment made to another person or under subsection 153(1) in respect of an amount paid to another person who is non-resident or who is resident in Canada solely because of paragraph 250(1)(a) is liable to pay as tax under this Act on behalf of the other person the whole of the amount that should have been so deducted or withheld and is

entitled to deduct or withhold from any amount paid or credited by the person to the other person or otherwise to recover from the other person any amount paid by the person as tax under this Part on behalf of the other person.

Related Provisions: 215(6) — Parallel provision for non-resident withholding tax; 227(10) — Assessment.

Notes: 227(8.4) does not impose liability for tax not withheld at source from an employee who is resident in Canada (e.g., where the “employer” thought that the “employee” was an independent contractor). Similarly, 227(8.1) applies only to withholdings from non-residents. There are penalty and interest provisions, but no provision in 227 appears to impose liability for the unwithheld tax itself. (This is different from tax withheld but not remitted, for which 227(9.4) imposes liability.) If the entity not withholding is a corporation, 227.1(1) appears to impose liability on both corporation and directors, although it was designed specifically to catch the directors. See however VIEWS docs 9810975, 2003-0051261E5, and *Storrie*, [1996] 2 C.T.C. 2596 (TCC).

See also Notes to 227(8) and (10).

227(8.4) amended by 2006 Budget first bill (implementing a 2005 Budget proposal), effective 2006, to add reference to 135.1(7). (The references to 135(3) and 153(1) were formerly broken out into paras. (a) and (b).)

227(8.4) amended by 1991 technical bill, effective July 14, 1990.

CRA Audit Manual: 15.2.11: Withholding of Part I tax — income from carrying on a business in Canada.

(8.5) No penalty — certain deemed payments — Subsection (8) does not apply to a corporation in respect of

(a) an amount of interest deemed by subsection 214(16) to have been paid as a dividend by the corporation unless, if the Act were read without reference to subsection 214(16), a penalty under subsection (8) would have applied in respect of the amount; and

(b) an amount deemed by subparagraph 212.3(7)(d)(ii) or subsection 247(12) to have been paid as a dividend by the corporation.

Notes: 227(8.5) provides that there is no penalty for failing to withhold tax on a deemed dividend resulting from the thin-capitalization rules (18(4), 12(1)(1.1), triggering tax under 214(16) and 212(2) — provided 212(1)(b) withholding was not already required on the interest) or a transfer-pricing adjustment (247(12) and 212(2)). This is presumably because these rules’ application may not be known until after year-end.

227(8.5)(b) amended by 2014 Budget second bill to add reference to 212.3(7)(d)(ii), effective for transactions and events that occur after March 28, 2012.

227(8.5) added by 2012 Budget second bill, effective for taxation years that end after March 28, 2012.

Former 227(8.5) repealed by 1992 technical bill, effective 1993. It and 227(9.5) were replaced with new 227(9.5).

(8.6) No penalty — qualifying non-resident employers — Subsection (8) does not apply to a “qualifying non-resident employer” (as defined in subsection 153(6)) in respect of a payment made to an employee if, after reasonable inquiry, the employer had no reason to believe at the time of the payment that the employee was not a “qualifying non-resident employee” (as defined in subsection 153(6)).

Notes: 227(8.6) added by 2016 Budget first bill, for payments made after 2015. See Notes to 153(1) under “153(1)(a)(ii)”.

(9) Penalty — Subject to subsection (9.5), every person who in a calendar year has failed to remit or pay as and when required by this Act or a regulation an amount deducted or withheld as required by this Act or a regulation or an amount of tax that the person is, by section 116 or by a regulation made under subsection 215(4), required to pay is liable to a penalty of

(a) subject to paragraph (b), if

(i) the Receiver General receives that amount on or before the day it was due, but that amount is not paid in the manner required, 3% of that amount,

(ii) the Receiver General receives that amount

(A) no more than three days after it was due, 3% of that amount,

(B) more than three days and no more than five days after it was due, 5% of that amount, or

(C) more than five days and no more than seven days after it was due, 7% of that amount, or