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PERLEY-ROBERTSON, HILL & McDOUGALL LLP/s.r.l.

## Dealing with the Canada Revenue Agency

*Gregory Sanders, Tax Law Lawyer*

The Canada Revenue Agency ("CRA") is empowered with the administration and enforcement of the *Income Tax Act* (the "*Act*"). In connection with this, numerous issues arise for taxpayers in their interactions with CRA in respect of the administration and enforcement of the *Act*. This summary highlights some of the key issues that arise and some practical tips in dealing with CRA.

Every taxpayer, which includes an individual or a corporation, is required to file a "Return of Income" (a "Tax Return"). The Tax Return must be filed in prescribed form and within specific deadlines (April 30th for individuals and six (6) months following the year-end for corporations). Corporations with gross revenues over $1M are required to file their corporate tax returns electronically. The Tax Return filing system is a self-assessing one in that the taxpayer initiates the process by calculating his or her tax liability and then allows CRA the opportunity to review their calculations to determine if they agree with them or not. Typically, CRA has up to at least three (3) years to review a taxpayer's filing for any given year. In some cases, in order to ensure that a taxpayer is not assessed a penalty for late filing a Tax Return, a Tax Return may be filed with incomplete or inaccurate information on the basis that an amendment to the Tax Return will be filed at a later date. Administratively, CRA allows for an amendment to a Tax Return but technically there is no obligation on CRA's part to accept such an amendment. Further, if a taxpayer files a Tax Return and either fails to report income or inaccurately reports income, they may be subject to various forms of penalties for their errors or misrepresentations. The nature of the penalty will depend on the error or inaccuracy. Typically, an inadvertent error is less likely to be subject to a penalty than one that appears to have been intended or that should have been identified by the taxpayer. Many taxpayers believe that if they hire accountants to prepare their Tax Returns, that it the accountant's responsibility to ensure that their Tax Returns are accurate. Traditionally, this argument has not been acceptable to CRA who takes the position that a taxpayer is responsible for their own Tax Return whether they retain an accountant or not.

Many taxpayers wonder whether they have a duty to inform CRA where an error is discovered that would be disadvantageous to the taxpayer but that the taxpayer honestly was unaware of at the time that he or she filed their Tax Return. CRA has stated that a taxpayer has no duty to advise the CRA of a mistake in a Tax Return if it was not aware of the error at the time of filing even if the mistake, when corrected, would result in additional tax owing by the taxpayer.

In these circumstances, the taxpayer really has two choices. They can sit back and hope CRA does not discover the error or they can approach CRA to make a Voluntary Disclosure to avoid penalties. As a basic standard of conduct to assist in making this decision, if it could be perceived that the error made was in fact a misrepresentation caused by neglect then the taxpayer should consider making a Voluntary Disclosure.

However, if the error was an honest mistake that the taxpayer can prove that they were unaware at the time of filing their Tax Return, then they may consider taking a "wait and see attitude" and hope that the error is not discovered.

Sometimes an error is made in documentation in respect of a transaction carried out by the taxpayer that the taxpayer feels needs to be rectified. In this context, there have been several cases allowing for taxpayers to retroactively adjust documents or agreements to correct errors that were unintended and that could have led to adverse tax consequences. A review of case law in respect of these rectification cases shows that the best course of action is to notify CRA that the rectification is being sought so that they could appear at a motion before a judge whereby the taxpayer is asking that certain documents be amended to reflect the true intention of the parties.

Where a taxpayer has filed a Tax Return as required, CRA's initial review of such Tax Return is evidenced by the issuance of a Notice of Assessment to the taxpayer. Effectively, the Notice of Assessment fixes the amount of the taxpayer's liability based on CRA's initial review of the Tax Return. CRA then has a further three (3) year period to review the detail of the Tax Return to determine whether or not the original assessment issued is accurate. It is important to note that a taxpayer's liability is not solely based on an assessment. The tax liability exists whether or not an assessment has been made or a Notice of Assessment issued. If CRA sends a Notice of Assessment or Reassessment to a taxpayer that is different from the taxpayer's calculation of their tax liability, the taxpayer typically has a ninety (90) day period in which to file an Objection to the Notice of Assessment. It is important to note that just because CRA permits a taxpayer to deduct certain expenses in one year does not preclude CRA from disallowing the deduction in a subsequent year. In other words, CRA is not bound by its earlier assessments of a taxpayer. Further, even if CRA's actions with respect to other taxpayer's with similar facts is different, it is not relevant and not a defence to a taxpayer who wants to argue that they are entitled to a certain deduction because their circumstances are similar to other taxpayers.

Even though there is a limitation period for which CRA can review and alter a taxpayers liability for any given taxation year, there are circumstances where that limitation period can be extended. Typically, this involves a misrepresentation by a taxpayer attributable to neglect. Many people interpret this as meaning that a taxpayer must be deliberate in their misrepresentation in order for CRA to reassess a taxpayer beyond the normal three (3) year limitation period. However, this is not the case. A misrepresentation arising because a taxpayer was neglectful but not deliberate may be sufficient to allow CRA to reassess beyond the limitation period.

Occasionally, a taxpayer receives a Notice of Assessment that indicates there is no tax payable. We often refer to this as a "nil assessment" in that the taxpayer had no taxable income to generate a tax liability or, in fact, was in a loss positon in a specific year. Even though CRA often issues a Notice of Assessment for a nil assessment, this is not a legally binding document on the Minister. In essence, this is a notification that no tax is payable but not an actual assessment and, therefore, the normal reassessment period does not begin to run in these circumstances. This means that CRA has an unlimited amount of time to challenge a taxpayer's calculation of its tax liability in the year in which there was no tax liability based on the Tax Return as filed. Often, through discretionary deductions, it is possible for a taxpayer to ensure that they have a minimal amount of taxable income and therefore a tax liability to ensure that the Notice of Assessment

when issued starts the limitation period and prevents CRA from assessing beyond the traditional three (3) year limitation.
If a taxpayer gets into a dispute with CRA as to the amount of tax liability, it is important to understand that typically the burden of proof in judicial proceedings is on the taxpayer. Although it is CRA's duty to communicate to the taxpayer the precise facts and assumptions upon which it has relied to raise an assessment, these facts and assumptions are presumed to be correct and the taxpayer must be able to raise doubt as to their accuracy. Being successful in tax litigation will ultimately depend on the ability of the taxpayer to show that the facts and assumptions made by CRA were not accurate.

In tax disputes, taxpayers often want to be able to find a settlement on practical grounds. In civil disputes, parties may agree to "split the difference" and not ultimately resolve the legal issues at the heart of the dispute. This is typically not the case in tax litigation. CRA will not generally settle a tax matter without a basis in the *Act* for the settlement. It is generally understood that CRA does not have the power to settle on a basis that cannot be supported in the *Act* merely as a tool for "splitting the difference".

A taxpayer can have numerous interactions with CRA in respect of their Tax Returns as filed. It is important for taxpayers to understand their rights and obligations with respect to Tax Returns as filed, their timeliness and their accuracy.

*Gregory is a Partner and Head of the Tax Law Group at Perley-Robertson, Hill & McDougall. He can be reached at gsanders@perlaw.ca or 613.566.2846.*