



Disputing your Tax Assessment



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CHARTERED PROFESSIONAL ACCOUNTANTS

DISPUTING YOUR TAX ASSESSMENT

Each year, about 27 million individual income tax returns are filed with and processed by the Canada Revenue Agency (“CRA”). While no two of those returns are exactly alike, all of them have one thing in common—each is assessed by the Agency, following which a Notice of Assessment is issued to the taxpayer.

The Notice of Assessment contains an overall summary of the CRA’s conclusions with respect to the taxpayer’s income and tax amounts for the year. That Notice includes, in page 3, a listing of the taxpayer’s total income, net income, and taxable income, the amount of any non-refundable federal and provincial credits allowed, and the amount of tax payable for the year. Where the CRA’s assessment dif-



fers from the taxpayer’s in any way, the reasons for those changes are outlined on pages 1 and 2 of the Notice of Assessment, under the heading “Explanation of changes and other important information”.

In most cases, the information contained in the Notice of Assessment is the same as that provided by the taxpayer in his or her return, perhaps with a few arithmetical corrections made by the CRA. In a minority of cases, the information presented in the Notice of Assessment will differ from that provided by the taxpayer in his or her return. Where that difference means an unanticipated refund, or a refund larger than the one expected, it’s a happy day for the taxpayer. In some cases, however, the Notice of Assessment will inform the taxpayer that additional amounts are owed to the CRA.

When that happens, the taxpayer has to figure out why, and to decide whether or not to dispute the CRA’s conclusions. Many discrepancies are

the result of an error or omission made by the taxpayer in completing the return. A lot of information from a variety of sources is reported on even the most straightforward of returns, and it’s easy to overlook or misstate some of that information. The widespread use of tax return preparation software has minimized the number of errors made by taxpayers in completing their returns—particularly arithmetical errors or a failure to correctly carry over amounts from one section of the return to another. However, even where such software is used to prepare the return, errors can still occur. Tax return preparation software relies, in the first instance, on information input by the user with respect to amounts of income, deductions, and claims for non-refundable tax credits. No matter how good the software, it can’t account for income information which the taxpayer hasn’t provided. In other cases, the taxpayer might transpose figures when entering them, such that an amount of \$17,323 becomes \$13,723 on the tax return. Once again, the tax software has no way of knowing that the information input was incorrect, and calculates tax owing on the basis of the figures provided. In other cases, the taxpayer might make a claim for a deduction or a credit which is not, in fact, claimable by him or her, but that fact cannot, in many instances, be discerned by the tax software program.

There are, in addition, two persistent tax myths that continue to circulate. The first is that income amounts below a certain level—\$100 is the amount usually cited—are not taxable. The second related misconception is that where a taxpayer does not receive an information slip (e.g., a T4 or a T5) indicating that a certain amount of income of whatever kind was received, that amount doesn’t have to be reported as income. Both such statements are incorrect. All sources of taxable income, whether employment income, business income or investment income, are taxable no matter how small the amount. As well, all taxpayers are responsible for reporting all income received and paying tax on that income, and the fact that an information slip was lost, mislaid, or never received doesn’t change anything. The CRA receives a copy of all information slips issued to Canadian taxpayers, and its systems will cross-check to ensure that all income is accurately reported.

Where there is additional tax owing because of an error or omission made by the taxpayer in completing the return, and the CRA’s figures are correct, disputing the assessment doesn’t really make sense. There are, however, instances

in which the CRA and the taxpayer are in disagreement over substantive issues, and those issues most often involve claims for deductions or credits. For instance, the CRA may have disallowed an individual's claim for a moving expense, or for a deduction claimed for a business expenditure, which the taxpayer believes to be legitimate. When that happens, the taxpayer has to decide whether to dispute the assessment.

Before making that decision, and whatever the nature of the dispute, the first step is always to contact the CRA for information on why the change was made, if that isn't clear from the explanation provided on pages 1 and 2 of the Notice of Assessment. It is no longer possible to have a face-to-face meeting with a CRA representative at a local Tax Services Office (TSO), as such in-person services were discontinued a few years ago. Taxpayers who want information about their Notice of Assessment must now call or write to the CRA. The first step to be taken would be a call to the Individual Income Tax Enquiries line at 1-800-959-8281. If that call doesn't resolve the taxpayer's questions, he or she can write to or fax the Tax Centre that processed the return. The name of that Tax Centre can be found in the top right hand corner of each page of the Notice of Assessment, and fax numbers and mailing addresses for the Tax Centres are available on the CRA website at www.cra-arc.gc.ca/cntct/prv/txcntr-eng.html. Communication with a Tax Centre can only be done by fax or mail, as phone numbers for Tax Centres are not available to the public.

If the situation still isn't resolved by these communications with the CRA, and there is still a difference of opinion, it's time for the taxpayer to consider filing a formal Notice of Objection, disputing the CRA's assessment of his or her tax liability for the year.

Filing a Notice of Objection

What is the filing deadline?

There is a time limit within which a taxpayer must file the Notice of Objection, albeit a relatively generous one. In all cases, a Notice of Objection must be filed by the later of the following two dates:

- one year after the date of the filing deadline for the return in dispute; or
- 90 days after the day the CRA issued the Notice of Assessment for that return. The date can be found in the top left hand corner of page 1 of the Notice of Assessment for that tax year.

The return filing deadline can differ, depending on who is filing the return. Most taxpayers must file their returns by April 30, meaning that their deadline for filing a Notice of Objection will be April 30 of the year following the year of filing, or 90 days after issuance of the Notice of Assessment, whichever is later. Self-employed taxpayers (and their spouses) have until June 15 to file a return. Consequently, for those taxpayers, the deadline for filing a Notice of Objection is the later of June 15 of the year following the year of filing, or 90 days after the date on the Notice of Assessment.

What's the effect of filing a Notice of Objection?

The filing of a Notice of Objection by a taxpayer has two immediate effects. First, it puts the CRA on notice that the taxpayer is disputing his or her tax assessment for the year. Second, where the taxpayer files a Notice of Objection, that filing puts a stop—in most cases—to any collection efforts which are being taken by the CRA. One exception to that rule which may affect individual taxpayers arises where a disputed assessment includes an amount claimed as a charitable donation tax credit or a deduction claimed in relation to a tax shelter. In such cases, the CRA postpones its collection actions only for 50% of the amount in dispute. In other words the taxpayer involved in a dispute over a charitable donations tax credit or tax shelter deduction claim will be required to pay half of the amount in dispute, even if he or she has filed a Notice of Objection.

What's included in the Notice of Objection?

The CRA provides a prescribed form (Form T400A, *Objection—Income Tax Act*) for the filing of a Notice of Objection, which is available on the CRA website at www.cra-arc.gc.ca/E/pbg/tf/t400a/t400a-12e.pdf.





While use of the prescribed form isn't mandatory, it's generally a good idea, for at least two reasons. First, the act of filing the prescribed form makes it clear to the CRA that a formal objection to the assessment has been filed, in a way that a letter or other communication may not. Second, use of that form ensures that the taxpayer provides the CRA with all necessary and required information, in a single document.

Taxpayers who choose to file an objection to their Notice of Assessment by a means other than filing the prescribed form should ensure that all of the following information is included in the letter which they send to the CRA:

- name and address;
- a telephone number where they can be reached during the day;
- the date of the relevant notice of assessment;
- the tax year of the assessment;
- social insurance number;
- the relevant facts and reasons for their objection;
- copies of all documents that support their objection; and
- where applicable, the name and address of their authorized representative.

Finally, the letter or other communication sent to the CRA objecting to a Notice of Assessment must be signed and dated by the taxpayer. It's also advisable to include a copy of the Notice of Assessment which the taxpayer is disputing.

In most cases, a taxpayer who is filing a Notice of Objection is disputing his or her tax liability for only a single tax year. However, where the objection covers more than one year, it's necessary to file a separate Notice of Objection (or letter) for each taxation year under dispute.

Where a taxpayer has chosen to use the prescribed form to file the objection and has previously registered for the CRA's online service My Account, the objection can be filed online using My Account. In all other cases the objection, whether in prescribed form or by letter, should be sent to the appropriate Intake Centre for tax appeals. There are two such centres, and the taxpayer's postal code will determine which one will handle the appeal.

Taxpayers having a postal code starting with letters A to P should send their objection to the Eastern Intake Centre at the following address:

Eastern Intake Centre
Sudbury Tax Service Office
1050 Notre-Dame Avenue
Sudbury, Ontario
P3A 5C1

Conversely, objections filed by taxpayers whose postal code starts with the letters R to Y should be sent to the Western Intake Centre at:

Western Intake Centre
Vancouver Tax Service Office
9737 King George Boulevard
PO Box 9070, Station Main
Surrey, British Columbia
V3T 5W6

Once the CRA has received the taxpayer's Notice of Objection, it will be reviewed by an authorized representative of the Agency, who may or may not contact the taxpayer for further information about the issues in dispute. Either way, a final decision will be made with respect to the original assessment by the Chief of Appeals or another authorized officer. Where the decision made is that no change to that original assessment was warranted, the Agency will send the taxpayer a Notice of Confirmation, informing them that in the CRA's view, the original assessment was correct. If, however, the reviewing officers determine that the objection filed is correct, a Notice of Reassessment will be issued and the taxpayer's return for the year will be adjusted.

Where the taxpayer's objection was successful and the CRA adjusts the return for the year in a way which is satisfactory to the taxpayer, then there is clearly no need for further action on the taxpayer's part. Where, however, the CRA confirms the original assessment, the taxpayer must make a decision about whether to take the dispute further, and appeal to the courts.

Appealing to the Tax Court of Canada

Every taxpayer who disagrees with the CRA's assessment of his or her tax liability for one or more tax years has the right to appeal to the Tax Court of Canada. In most instances, appearances before a court of any kind are made by a legal representative, but the Tax Court provides for an informal appeals procedure which makes it easier for taxpayers to appear before it acting on their own behalf, without a lawyer.

The informal procedure can be pursued by a taxpayer in the following circumstances:

- the disputed amount of federal tax and penalties is not more than \$25,000 per assessment (that is, per tax year);

- the amount of any losses in dispute is not more than \$50,000 per determination; or
- the only matter in dispute is the imposition or amount of interest levied on federal tax and penalties.

A taxpayer who wishes to appeal to the Tax Court under the informal procedure must send a notice of appeal to that Court within 90 days after he or she receives a Notice of Reassessment or Notice of Confirmation from the CRA. An appeal can also be filed if the CRA has not responded within 90 days to the filing of the taxpayer's objection. No fee is charged for the filing of an appeal under the informal procedure.

Where the amounts in dispute are greater than those outlined above, or the taxpayer, although entitled to use the informal procedure, chooses not to do so, the appeal will be heard under the Tax Court's general procedure. While taxpayers are still allowed to appear on their own behalf in a general procedure hearing before the Court, obtaining legal counsel for such a hearing is generally advisable. The process, including the rules governing the use of both verbal and documentary evidence, is much more formal than that employed for appeals heard under the informal procedure, and most taxpayers will not be familiar with those rules. As well, the amounts in dispute are usually greater and, where a taxpayer is unsuccessful on a formal procedure appeal, there is the possibility that he or she will be ordered by the Court to pay some or all of the legal costs incurred by the other side.

Once a matter is decided by the Tax Court, under either procedure, the next level of appeal would be to the Federal Court of Appeal and then to the Supreme Court of Canada. Very few tax disputes reach this level of appeal, and anyone contemplating such an appeal should do so in consultation with legal counsel.

Interest charges and collection actions

Interest charged and paid

All taxes owed by individual taxpayers for a particular tax year are due and payable by April 30 of the following year. Beginning May 1, the CRA charges interest on any outstanding amounts. Such interest is levied at a prescribed rate which is, by law, higher than commercial rates and is compounded daily. Filing a Notice of Objection will not stop the interest clock

from running and interest will continue to accrue throughout the appeals process, no matter how long that takes.

Where a taxpayer is successful in challenging the CRA's assessment of his or her tax payable, and a decision made that the taxpayer was correct and that the amount in dispute is not in fact owed, any interest accrued will, of course, be cancelled. Where the result of the objection or appeal is not in the taxpayer's favour, interest will be payable on any amount owed from May 1 until the date that payment is made.

A taxpayer who is pursuing an objection or appeal against a tax assessment also has the option of pre-paying the amount in dispute, in order to avoid the imposition of interest charges. If the taxpayer is eventually found not to owe the amounts in dispute, that pre-payment is returned, with interest.

The rate of interest levied by the CRA is about four percentage points higher than current commercial rates. Taxpayers engaged in a dispute with the Agency might, in order to minimize any potential interest costs, consider making a pre-payment of part or all of the amount in dispute. The best case scenario, of course, is for the taxpayer to make that pre-payment from his or her own resources. If that's not possible, borrowing to pre-pay the amount in dispute can make sense, where borrowed funds are available at an interest rate lower than the one levied by the CRA.

While the CRA's goal is to resolve taxpayer disputes within a reasonable time frame, the administrative process can at times be protracted. Where a taxpayer has made a pre-payment of amounts in dispute, he or she can apply to the Agency for repayment of those amounts where the Agency has not issued a Notice of Confirmation or a Notice of Reassessment within 4 months (120 days) after the taxpayer filed the Notice of Objection, or where the taxpayer files an appeal to the Tax Court.

Collection actions

As noted above, the filing of a Notice of Objection generally stops collection actions by the CRA, with those collection actions recommencing 90 days after the Agency sends its Notice of Confirmation to the taxpayer.

Where the taxpayer takes the dispute further, and files an appeal to the Tax Court of Canada, the CRA usually postpones its collection actions until after the Court has rendered its decision.

Collection actions will re-commence after that date, even if the taxpayer files a further appeal to the Federal Court. In those cases, the CRA will accept security for payment while the appeal remains outstanding.

Where administrative relief is available

The rules governing the filing of a Notice of Objection prescribe strict time limits within which such filings must be made. Notwithstanding, the Minister of National Revenue has the authority to provide an extension of those limits, in some circumstances.

Where a taxpayer (or a representative) did not file an objection on time because of circumstances which were beyond his or her control, that taxpayer can apply for a time extension. Any such application should be made as soon as possible but must in any case be made within a year after the original filing deadline for the objection. For the Minister to provide an extension of time to file an objection the taxpayer must show that, within the original period for filing he or she intended to object but could not do so or have someone do so on their behalf. In addition, it must be demonstrated that it would be fair to grant the application for an extension, and that that application was filed as soon as it was possible to do so. A CRA representative will determine whether or not an extension should be granted and will notify the taxpayer in writing of that decision, in either event.

Some administrative relief may also be available to taxpayers when it comes to the imposition of interest charges or penalties. No one, including the Minister of National Revenue and the

courts, has the authority to relieve a taxpayer of his or her obligation to pay taxes owed. The Minister is, however, provided with the administrative authority to cancel penalties or interest charges levied, under a CRA program known as the Fairness Package.

The terms on which such administrative relief can be provided are outlined on the CRA website at www.cra-arc.gc.ca/gncy/cmplntsdpts/cn-clwvplnty/menu-eng.html. Applications for relief under the Fairness Package must show that the taxpayer incurred interest or penalty charges in circumstances which made it impossible for him or her to properly fulfill tax obligations. Those circumstances can be personal (for instance, serious illness or financial hardship) or can be more general in nature (for instance, taxpayers who must be evacuated from their homes because of a natural disaster). Whatever the cause, the taxpayer must apply for relief, documenting the particular circumstances which led to the failure to meet tax obligations and the consequent imposition of penalties and/or interest charges.

No one really likes paying taxes, but being asked to pay taxes which you don't believe you actually owe is even worse. Every Canadian taxpayer has the right to dispute his or her tax assessment, no matter what the issue or how small the amount. And, while our tax system is complex, the process for filing an objection is relatively straightforward, and well within the grasp of most taxpayers. Whether the issue or the amount at stake is actually worth pursuing, through the filing of an objection (and sometimes further) is a decision which can be made only by the individual taxpayer.