

## ***I Object!***

On occasion the taxpayer and their tax specialist may not agree with the steps or application of the legislation that Canada Revenue Agency has applied to their tax returns. Steps are in place for dealing with a “difference of opinions.”

So are you Objecting or Appealing? There is a difference.

### **Objections**

Prior to filing a formal objection, the first step is always to talk to CRA. Many times the discrepancy is a matter of information, or lack of information between the taxpayer and the Government. This is the quickest and easiest way to deal with a potential problem.

A formal Objection to an assessment or ruling by CRA follows if after speaking with CRA informally, the situation has not been resolved to your satisfaction. This requires filing form T400A directly to CRA at the Tax Centre where your returns were assessed. This information is at the top of your Notice of Assessment.

CRA will acknowledge receipt of your Objection within 30 days. Unfortunately, depending on the complexity of your problem, it may take up to six months before it is actually looked at.

When filing your objection be sure to follow the instructions. The easier you make things for the auditor that looks at your objection, the better your chances of success.

Include copies (not originals) of all relevant documentation and schedules. Remember your physical tax return will not be on the desk of the auditor; they will be looking at the filings on the computer.

Be precise and concise. Address the issues and your reasons for disagreeing. In order to keep your options open, the last item in your objection should be *“for these, and other reasons that may be brought forward by the taxpayer or their representative, we object to the assessment as processed.”*

In most cases, a senior auditor at CRA who specializes in your particular area of concern handles your Objection. You, or your representative, will be contacted by CRA and an in-depth analysis of your concerns including reviewing any documentation you may have. The auditor will then make a “proposal” outlining the decision they intend to pursue as well as their reasons for it.

The proposal will remain open for 30 days to allow you to provide additional information or research CRA's position. It is at this point that the vast majority of disputes are resolved.

## Appeals

If you do not agree with the decision of the senior auditor, your next step is to appeal the decision. This is accomplished through the Court system, specifically the Tax Court of Canada. Under legislation, you have 90 days to appeal after CRA's response to your Notice of Objection. There are two avenues available through Tax Court.

Informal proceedings are reserved for disputes where the amount in dispute is less than \$12,000. Much like Small Claims Court, you do not require a lawyer to represent you during an informal Tax Court case. You may elect to be represented by your tax specialist or by yourself; either is acceptable to the Court.

It is important to remember that Tax Court deals with the specifics of the legislation. Under the Canadian legal system, courts and judges interpret and apply the legislation as it is written or as Tax Court or other Courts have previously interpreted it. The Court does not necessarily deal in "what's fair".

This is where it starts to become expensive. You will need to discuss with your financial advisors, tax specialists and lawyers to determine if the costs involved outweigh the gain.

Formal, or General Proceedings for amounts in excess of \$12,000, or if deemed necessary by the Court, take on the image of Court proceedings that we are all familiar with, assuming you watch television. Under the General Procedure, a lawyer is required; you no longer have a choice. There will also be a "discovery" requirement where CRA and your lawyer will be required to exchange all information and documentation so that both sides have the same information.

Still don't agree with the Tax Court of Canada decision? Then you still have an option open to you. Again, this is something that needs to be handled through your legal council, but you may appeal the decision to the Federal Court of Appeal. This appeal must be made within 30 days of the judgment made by the Tax Court.

Don't like the decision of the Federal Court of Appeal? Only one choice left and that is to appeal to the Supreme Court of Canada. Unlike other Courts in our system, the Supreme Court is not required to hear your appeal. The Supreme Court normally will only hear appeals on issues that have a national interest.

## Collections

I think it's fair to assume that if a taxpayer is proceeding through these steps, chances are pretty good that money is owed to CRA. Under ITA s. 225.1, collection proceedings are halted or suspended on filing of a Notice of Objection or an appeal to the Tax Court. Collection proceedings will not begin again until 90 days after CRA confirms their assessment or the Tax Court of Canada mails its decision to you.

The suspension of collection action is on income tax only. Other funds that may be owed to CRA, such as GST or Employee Tax Deductions are considered "trust funds" and payments are required regardless of any objection or appeal.

It is also important to note that any suspension of collection action only applies up to the Tax Court level. Collection will continue even if the taxpayer decides to appeal to the Federal Court.

Canada Revenue Agency will always look at a reasonable payment arrangement for tax debt. When determining what is reasonable, CRA will require a full disclosure of your income, expenses, assets and liabilities and will work with you to arrange a satisfactory payment plan. Interest at prescribed rates will apply and continue to accrue throughout the entire process.

When dealing with tax debt, it is always advisable to work with CRA to make arrangements and, once arrangements have been made, honour them. Like all creditors, CRA takes a very dim view of making arrangements and not having them honoured.

Always be pro-active. CRA does not like to be ignored. Collection action initiated can include garnishees on wages or bank accounts, seizure and sale of assets and many other methods available under the law to collect debt.

One last item ... occasionally a taxpayer will use the dispute resolution mechanism to defer off the payment of taxes. ITA s179.1 allows CRA to apply a penalty of 10% of the amount of taxes in dispute if it is determined that the Objection or Appeal was filed for the purpose of deferring payment of taxes. The Courts have determined that if an Appeal or Objection was unreasonable, and therefore frivolous, the penalty will apply.