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Resolving Tax Disputes in Canada – What to Consider



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Like many other countries throughout the world, Canada has become more aggressive and better organized at collecting taxes. The Canada Revenue Agency (CRA) is responsible for this task in Canada, and it offers procedures to resolve tax disputes. Here are some issues to consider:

1. Canada's Income Tax Act imposes taxes on Canadian residents' income, both as a direct tax on domestic-source income and indirect tax via withholdings on dividends, rents, royalty, interest and other passive income.
2. You are obligated to file an annual tax return if you have Canadian-source income. The CRA evaluates your return and issues an initial assessment. If a potential dispute arises, it will first show up here. The CRA normally has four years to assess your company's tax return, although the period may extend another three years under certain circumstances, and often applies to multinational businesses. There is no limit on the assessment period if you fail to file a required tax return.
3. In case of a CRA audit, you are required to maintain suitable books and records that allow authorities to accurately assess the tax you owe. The CRA has broad audit powers, obligating you to render all reasonable assistance and answer all proper questions. Noncompliance can result in fines, penalties and even prison time. However, you might be able to dispute a CRA audit if you believe the agency is "sending you a message" or targeting you for criminal investigation, both of which exceed its audit authority. Other sources of dispute can include requests for audit work papers related to your tax reserve calculation, questions regarding attorney-client privilege, and overly broad demands for electronic data and metadata.
4. If the CRA proposes a reassessment of your tax obligation, you usually have 30 days to provide additional information, and the CRA may offer you extra time if you make a compelling request. Your attorney will help you make a tactical decision as to whether you should collect the requested additional information. For example, it might make no economic sense to contest a reassessment that is based on national policy beyond the power of the CRA to modify. It is more cost-efficient to provide information that corrects mistakes or explains misconceptions on the part of the CRA.



5. If the CRA issues the reassessment, you have 90 days to officially file an objection, although the timespan can be extended up to a year if circumstances warrant. If you file a notice of objection, you trigger an internal review by the Appeals Division of the CRA. The notice should include a reasonable description of each open issue, a quantification of the disputed amounts, and the facts backing up each disputed matter. You cannot, at a later date, raise new concerns that reduce your taxes by more than the disputed amount. You might pursue a strategy of including all possible issues and making high-end estimates of the disputed amounts when you issue an objection, in order to maximally preserve your prerogatives. An issued reassessment is a valid tax debt, and includes any penalties and interest. However, the CRA will usually refrain from collection attempts until a dispute is resolved. Nevertheless, large corporations must pay at least 50 percent of the disputed amount up front. The CRA may issue multiple reassessments, each one negating the one previous. You must dispute the new one with another notice of objection. Note that the CRA assesses an interest rate of 5 percent (non-deductible), but only 1 percent if you are owed a refund.
6. Certain complications can arise when you file an objection:
 - a. You can't object to a reassessment that has no impact on your current tax, penalties or interest.
 - b. If an objection spans more than one year, you must file a notice for each relevant year.
 - c. The CRA has the right to come up with new arguments to support its position. Once the limitation period has expired, the amount of tax you owe for a particular dispute cannot be increased.
 - d. The CRA Appeals Division will either confirm, withdraw or modify the reassessment. However, you might have to wait a year before the Division gets around to assigning an Appeals Officer.
7. You can appeal a reassessment to Canada's Tax Court if the Appeals Division confirms its decision. However, you can also file with the Tax Court within 90 days after you serve your notice of objection – this can often short cut the lengthy appeals procedure and therefore reduce your exposure to assessed interest. The Tax Court appeal must be carefully drafted by competent legal counsel in order to make a good first impression and to set the proper scope for documents to be produced. The Tax Court appeal usually entails a set of legal steps that involves the exchange of documents, hearing testimony, filing of motions and a judgement. If you lose the



case, you have 30 days to file an appeal with the Federal Court of Appeal. The FCA cannot reverse a lower court's factual findings unless a substantial error occurred. If you lose in the FCA, you can try the Supreme Court of Canada, but usually this is limited to questions of national significance. Once the dispute is closed, the final costs will be assessed.

- 8.** You have available certain alternative remedies rather than a formal hearing, including:
 - a.** Voluntary Disclosure Program: You can request relief when you've made a mistake that involves additional tax, penalty or interest. The CRA might then waive the penalties and interest.
 - b.** Rectification: You can have the court fix an error in a document that fails to correctly represent a mutual agreement among the parties.
 - c.** Taxpayer Relief: You can request relief if you believe the amount of tax, penalties and/or interest assessed is unduly harsh. This might be granted if the circumstances were beyond your control, the CRA gave you bad information, the CRA was slow to act, or you are financially incapable of paying the full amount.
 - d.** Judicial Review of Administrative Decisions: You can ask the Federal Court of Appeals to overturn an administrative decision made by a CRA officer. If you get a favorable decision, the issue goes back to the CRA for reconsideration.

Tax disputes are often more difficult to resolve than are traditional civil litigation cases. The use of highly specialized and experienced lawyers and chartered professional accountants, such as Miller Bernstein LLP, is therefore highly recommended.