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TAX FACTS

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Appealing Reassessments

Revenue Canada Questions your Tax Return - What Do You Do?

You received a Notice of Assessment for your 1989 taxation year in December, 1990. You breathed a sigh of relief when Revenue Canada gave you the all clear for that year. How you have received a Notice from the Tax Department questioning some of the calculations in your 1989 tax return. What do you do?

The Reassessment

Revenue Canada is in the process of reassessing your 1989 tax year. This involves auditing your books and records for the 1989 year and discussing any questions with you that they may have. Before issuing a Notice of Reassessment, they will want to hear your side of the story. You will probably find it useful to have a tax professional assist you in reorganizing your records for 1989 and anticipating any questions that Revenue Canada might ask. The professional will also help you answer the questions and interpret their meaning from a tax prospective. You can arrange to have Revenue Canada deal with you through the professional, so that Revenue Canada phones him or her first.

Filing a Notice of Objection

If you are unable to convince the auditor of the efficacy of your position, the Minister of National Revenue will issue a Notice of Reassessment. Do not worry; all is not lost. You may now file a Notice of Objection within 90 days of the date shown on the Reassessment. The Canadian Income Tax Act as it currently reads requires the Notice of Objection to be set in prescribed form in duplicate by registered mail to the Department of National Revenue. The Minister of National Revenue has proposed some changes to this procedure to make it easier for individuals and testamentary trusts to file Notices of Objection. The draft legislation is called the Fairness Package. The Fairness Package and its effect will be discussed in a subsequent article.

When Revenue Canada receives your Notice, it begins a process of review of its previous decision through the Appeals Division. The review is independent, meaning that different auditors from those first issuing the reassessment are involved in the appeal. They have access, however, to all the notices and records made earlier and will again have discus-

sions with you and your tax professional with respect to any additional information they need. If you wish to, you can indicate in your Notice of Objection that you choose to appeal immediately to the Tax Court of Canada and waive reconsideration of the reassessment by Revenue Canada. If the Minister consents, he will send your Notice of Objections to the Registrar of the Court. The advantages to having the Department review its reassessment first is its procedure is informal and relatively inexpensive.

Upon receiving your Notice of Assessment, the Minister is required, with all due dispatch, to reconsider the reassessment and vacate, confirm or vary it. If you are unlucky and the Minister confirms the original reassessment or reassesses in an unfavourable way, you have 90 days from the date of mailing of his notice to you to appeal to the Tax Court of Canada. You can also appeal where 90 days have elapsed after you served the Notice of Objection and the Minister for some reason has not notified you of his decision.

In the Courts

The Tax Court of Canada now has two procedures for dealing with contested tax matters. One is informal for matters involving tax of less than \$7,000 or losses of less than \$14,000. For this one, you do not need legal representation and may represent yourself or have your accountant represent you. The rules of evidence are generally not enforced. The other procedure is a formal one for more costly matters which usually involves a lawyer and formal court rules.

The Tax Court has the jurisdiction to dismiss your action, allow it, vacate or vary the assessment. It may also refer it back to the Minister for reconsideration and reassessment. You will receive a written copy of the decision and any written reasons given for it.

If the decision is still unsatisfactory to you, you are entitled to further appeal the matter to the Federal court of Appeal. Attendance at that Court requires a lawyer and involves formal procedure. If you wish to appeal further, you must appeal to the Supreme Court of Canada. Such an appeal is not available without the permission of the Supreme Court itself. You must make an application for leave to appeal to the Supreme Court, which may or may not be allowed.

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