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Vern Krishna, Tax Chambers, summarizes evidence within the Auditor General of Canada's 2017 report showing the CRA's failures and its shortcomings of public duties, even though the CRA is supposed to protect taxpayers by providing them with complete, accurate, clear, and timely information. Krishna gives readers an example of what rights taxpayers should have.

CRA Falls Down on its Public Duties (Vern Krishna)

Date: March 19, 2018

 [CRA Falls Down on its Public Duties](#)

By Vern Krishna, CM, QC, FCPA

Canada does not have a legislated Bill of Rights to protect its taxpayers. Instead, we settled for an unlegislated declaration of 16 “rights” by the Canada Revenue Agency (“CRA”) that it would protect taxpayers by providing them with complete, accurate, clear, and timely information. The facts prove otherwise. As the Auditor General of Canada’s 2017 report shows, the CRA does not live up to its pious declarations. Indeed, if anything, the Report establishes the CRA’s failures with troublesome evidence of its shortcomings of public duties.

I can be excused for thinking that when the government proclaims a Bill of Rights that they actually acquire rights under it. In fact, as many taxpayers discover, they must wait, and then, wait some more to resolve their tax disputes. Unlike the criminal law, there is no legal right to speedy access to justice for taxpayers who fund government. Their role is to pay and wait.

There are three principal steps for resolving income tax disputes with the Canada Revenue Agency. The first is to file a proper Notice of Objection. Although the mechanics of this step are fairly simple (identify the taxpayer, the assessment objected to, the years involved, and the reasons for the objection), it is important to set out the relevant provisions and a brief statement of the reasons for the department to review.

The filing deadline is tight: the taxpayer must file the objection within 90 days of the date that it is mailed, or within one year of the due filing date. The deadline is strictly enforced, even if the Canada Post fails to deliver the notice of assessment to the taxpayer! There is no requirement for the CRA to send the notice by secure mail or courier. If it is lost, the taxpayer pays the price for non-receipt.

The next step involves an independent and impartial administrative review of the objection by the CRA. The CRA staffs its own Appeals Branch, which speaks to the independence of the review. The statutory obligation of the Minister of National Revenue is to reconsider the assessment *with all due dispatch* and then either vacate, confirm, or vary it, and notify the taxpayer in writing. The Taxpayer Bill of Rights gives taxpayers the right to a formal review, and a right to receive timely information. The Bill, however, is nothing more than a good feel public relations document. It has no legal status whatsoever, and is administered by an Ombudsman who has absolutely no authority over the CRA.

The administrative review is a slow and long drawn out process, which can drag on for years, during which time the taxpayer is charged non-deductible interest, at 5% (2016) compounding daily, on any disputed taxes that are unpaid during the review.

As the Auditor General's Report tabled in Parliament on November 29, 2016 confirms, the CRA interpretation of timeliness and the statutory mandate of processing "*with all due dispatch*" is flexible. Due dispatch conveys an image of speed and efficiency. The reality is otherwise. In 2014, for example, the CRA processed approximately 29.6 million income tax returns. Taxpayers filed objections to 66,864 of the returns for income taxes totaling \$4.8 billion. However, as of March 2016 there was a backlog of 171,744 objections for personal and corporate returns, representing more than \$18 billion of federal taxes. This represents an increase of 300% from \$6 billion in 2005.

After filing an objection on a low or medium complexity file, a taxpayer can expect to wait up to a year for initial contact by an appeals officer. Thereafter, it takes an average of 143 days to resolve low complexity objections, which represent approximately 60% of the yearly objection intake. The CRA resolves about 65% of these objections in favour of the taxpayer, and had to cancel almost \$1.1 billion in penalties and interest in 2016. However, any interest that the CRA pays the taxpayer (3% in 2016) is taxable as income. In the result, the taxpayer pays non-deductible interest at 5% on unpaid taxes, and is taxable on any refunded interest at 3%.

The average resolution time for medium and high complexity objections is staggering: 431 days for medium, and 896 days for high complexity files. Add in the initial contact time from an appeals officer, and medium complexity files can take more than two years to resolve; high complexity files can take up to three and one-half years! Some files go unresolved for half a dozen years or more.

The CRA is under no pressure to expedite files and become more efficient. In theory, the taxpayer can apply to the federal court to have his or her assessment considered with all due dispatch. In practice, the probability of success is minimal to non-existent. The court follows its precedents from 60 years past, even before the advent of electronic technology or calculators, that allow the CRA almost complete discretion in considering timely resolution. As the Exchequer said in *Provincial Paper Ltd. v. Minister of National Revenue*, [1954] C.T.C. 367:

... There is no standard in the Act or elsewhere, either express or implied, fixing the essential requirements of an assessment. It is, therefore, idle to attempt to define what the Minister must do to make a proper assessment. It is exclusively for him to decide how he should, in any given case, ascertain and fix the liability of the taxpayer.

And again six years later in *Jolicoeur*:

There is no doubt that the Minister is bound by time limits when they are imposed by the statute, but, in my view, the words "with all due dispatch" are not to be interpreted as meaning a fixed period of time. The "with all due dispatch" time limit purports a discretion of the Minister to be exercised, for the good administration of the Act, with reason, justice and legal principles. ...

Taxpayers also pay for the inefficiencies of tax administration in other ways. In 2015, for example, the CRA employed the equivalent of 1,138 full time employees and spent \$148 million on salaries and associated costs. In the result, Canadian taxpayers end up paying both ways, for their own dispute resolution, and the costs of government administration.

All of this before taxpayers get to the third and final step of tax litigation in the courts, which adds several years before the dispute is resolved. Canadians deluded by government public relations into believing that they actually have taxpayer rights must accept John Milton's sage admonition that "they also serve who only stand and wait." And wait we shall as governments pump more money into tax administration.

Indeed, if anything, the facts establish that the CRA is derelict in the performance of its public duties.

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