



Tax

Implications of tax disclosure case 'troubling' for public companies

By AdvocateDaily.com Staff



A recent Federal Court decision that compels a large business to disclose the "roadmap" of its uncertain tax positions to the Canada Revenue Agency (CRA) may signal a "troubling" change in the approach to public company audits, says Toronto tax litigator [Adrienne Woodyard](#).

[*Canada \(National Revenue\) v. BP Canada Energy Company*](#), 2015 FC 714 (CanLII) concerns a demand by the Minister of National Revenue for BP Canada to provide unredacted records "that describe its uncertain tax positions to assist the Minister in conducting its present and future tax audit responsibilities."

According to court documents that outline the minister's request, the records, known as tax accrual working papers, are required by publicly traded corporations in order to calculate reserves to account for contingent tax liabilities. The working papers contain issues lists, which identify the uncertain tax positions at highest risk for loss of tax revenue.

BP objected to the request, arguing in part that "the disclosure of the Issues Lists would constitute a compulsory self-audit by BP Canada, distorting the operation of the Canadian taxation system." During the audit process, BP provided the papers to the minister with a redacted list of uncertain tax positions.

As both parties agree, the issues lists "provide a 'roadmap' to target audit resources on issues of concern," says the decision.



The court ultimately found that the minister is entitled to compel BP Canada to disclose the issues lists for the purpose of expediting future audits, and that the demand is not unfair to BP.

As Woodyard, a partner with [DLA Piper \(Canada\) LLP](#) says, in years past, public companies were not typically required to produce issues lists during CRA audits. “For many years — at least since the early 2000s — taxpayers and the CRA have enjoyed an uneasy peace with regard to the scope of document disclosure requests. Around 2004, the CRA made public statements that provided some reassurance that it would not routinely demand the disclosure of working papers — a claim regarded by many with skepticism — as it turns out, with some justification.”

Although in this case, the CRA departed dramatically from this policy, Woodyard says the decision is not surprising.

“Section 231.1 of the Income Tax Act grants the minister very broad powers to compel the production of taxpayer records, and the information in question falls squarely within the scope of this provision. This case demonstrates how important it is that taxpayers properly manage the audit process so as to attempt to limit the number and scope of documents required, particularly taxpayers who are required for financial reporting and other regulatory purposes to record uncertain tax positions.”

For public companies, the implications of this case are troubling, insofar as it may signal a change in the CRA's approach to audits, adds Woodyard.

“The CRA is increasingly concerned with targeting ‘high-risk’ taxpayers and transactions, and it is not difficult to imagine auditors demanding the disclosure of issues lists as a matter of routine, in order to complete their review more quickly.”