



Tax

Taxpayers must approach CRA audits strategically

By AdvocateDaily.com Staff



When it comes to managing a Canada Revenue Agency (CRA) audit, the key thing for taxpayers to keep in mind is that in most cases, there is a “reverse onus” on the taxpayer to prove that its filings are correct, says Toronto tax litigator [Adrienne Woodyard](#).

“When the CRA believes a taxpayer has taken an unreasonable or incorrect position, it will issue a tax reassessment, and that reassessment is usually considered presumptively correct unless the taxpayer proves otherwise,” says Woodyard, a partner with [DLA Piper \(Canada\) LLP](#). “This is both inconvenient and counterintuitive for many clients,” she says.

“Many assume that if their position is ‘correct,’ or at least defensible, they will ultimately prevail. But CRA auditors, relying on the fact that the onus rests on the taxpayer, will sometimes process assessments without thoroughly reviewing all relevant facts and without reading the applicable law.” Compounding this problem, she adds, is the fact that the performance of CRA auditors is evaluated by the amount of additional tax they manage to identify, rather than the dollar value of the audit adjustments that survive the objection/appeal stage.

“An audit often requires strong advocacy to protect the taxpayer’s interests,” she explains. From the taxpayer’s perspective, the best results, she explains, are achieved prior to or at the reassessment proposal stage, rather than the objection stage. “If you can identify the key issues early, and convince the auditor to refrain from issuing a reassessment until you can gather, organize and present all of the necessary facts and documents to address those issues, the outcome is always better for the taxpayer.” Auditors are generally amenable to negotiation, Woodyard notes, particularly if the taxpayer appears cooperative



and responsive to the auditor's requests for documents. "But by the time most taxpayers seek help, the auditor has already reached his conclusions and is within days of finalizing a reassessment. By acting too late, taxpayers often miss an opportunity to put their best case forward, and minimize their tax bill."

At the same time, says Woodyard, counsel should be realistic about the CRA's willingness to compromise.

"It will not always be possible to resolve disagreements with the CRA at the audit or even the objection stage. In civil litigation, parties often seek the least expensive resolution possible, viewing court as a last resort. By the CRA is not always motivated by the same concerns," she says. High litigation costs, for example, are not typically a deterrent for the CRA, because the cost of paying the Department of Justice lawyer assigned to litigate a tax appeal is the same whether the case settles or goes to trial, she adds. However, the CRA may be reluctant to go to court if it is concerned with the possibility of a bad precedent.

Whether settlement can be achieved "largely depends on the nature of the dispute," comments Woodyard. "There are some cases in which the issue is 'all or nothing,' and there is no clear middle ground between the parties. In other cases, there is much more room for negotiation - for example, where the issue in question is the fair market value of property." The former cases can be challenging to resolve without a hearing, Woodyard notes, because "the settlement must be made in accordance with the provisions of the Income Tax Act, and the CRA cannot simply settle for an arbitrary amount."

"Some cases will not be resolved without going to court. If you can identify those types of cases early on, and work hard to separate those issues that can be resolved from those that the CRA will fight to the bitter end, it will save clients a great deal of time and frustration," says Woodyard.