



Tax

Taxpayer's responsibility to review accountant-prepared return

By AdvocateDaily.com Staff



Although many Canadians hire a professional to prepare their tax return, the courts have generally been unwilling to allow taxpayers to rely entirely on their accountant to ensure the accuracy of their return, Toronto tax litigator [Adrienne Woodyard](#) writes in *The Lawyer's Daily*.

“Some ask, ‘If my advisers, with all of their professional training, miss something, am I going to take the blame?’ Woodyard, a partner with [DLA Piper \(Canada\) LLP](#), writes.

“It’s a fair point, and one that takes on particular significance when the CRA is conducting an audit of prior years’ tax returns,” she adds.

In practice, says Woodyard, the CRA will often refrain from auditing and reassessing a taxpayer beyond the “normal reassessment period” (NRP) — for individuals, trusts and Canadian-controlled private corporations (CCPCs), this is ordinarily three years after the issuing of a notice of assessment, and four years for non-CCPCs.

During the NRP, she says, the CRA can examine a tax return and make any necessary adjustments, and if the taxpayer disagrees, the onus is on them to prove that the CRA was incorrect.

However, says Woodyard, the *Income Tax Act* also contains exceptions which allow the CRA to reassess beyond the NRP.

“The most common exception is the rule found in subpara. 152(4)(a)(i) of the Act. This provision allows the CRA to reassess *at any time* where it can prove that the tax return



contains a 'misrepresentation' (generally, an error resulting in an under-reporting of income) that is attributable to 'carelessness, neglect or wilful default.'

Most cases involving the misrepresentation rule turn on the question of whether there was an error attributable to carelessness or neglect.”

The misrepresentation rule has resulted in a number of tax appeals, writes Woodyard, with most falling into one of three categories, namely: where the taxpayer's conduct led to the error; where the accountant was at fault but the taxpayer ought to have detected the error; and where the accountant was at fault and the taxpayer was not capable of detecting the error.

“The latter two categories of cases often turn on the degree of oversight the taxpayer has exercised over the preparation of the return,” she adds.

In the first category, writes Woodyard, courts have often held that taxpayer error — such as a failure to provide the accountant with all relevant information pertaining to the preparation of the return — amounts to neglect or carelessness, if not wilful default.

The second category of cases involves errors made by the accountant, which the taxpayer, exercising reasonable care, likely could have detected, she adds.

“For example, where a taxpayer has provided all pertinent information and the accountant misses something, resulting in a material discrepancy in reported income, the CRA has successfully argued that the taxpayer's failure to note the discrepancy and inquire further amounted to carelessness or neglect,” says Woodyard.

This category of cases, she adds, often involve errors that even a brief review of the tax return would have revealed — and with the development of new initiatives such as the CRA's T-slip matching program, Woodyard says it is reasonable to expect that many of the most common errors will now be detected long before the expiry of the NRP.

Meanwhile, the third category of cases involves errors made by accountants which the taxpayer was not capable of detecting.



“Most such cases deal with technical issues, such as the application of rollover provisions, or the calculation of a capital dividend account balance, which are well beyond the ability of the taxpayer to detect, even on a careful review of the return. But where taxpayers have lost their appeals, it is often because they have failed to conduct a careful (or any) review of their returns,” writes Woodyard.

“Observers may question the fairness of some of these outcomes, particularly where a taxpayer is unfamiliar with the technical provisions at play and unable to conduct a meaningful review. But even where taxpayers have a long-standing relationship with a trusted accountant, and no reason to question the work that has been performed, the courts have generally been unwilling to allow them to rely entirely on their accountants to ensure the accuracy of their returns,” she adds.

Ultimately, she explains, the difference between neglect/carelessness and reasonable care lies in the degree of effort the taxpayer has taken to understand and verify the information in the return.