

## HOW DO I APPEAL MY INCOME TAX ASSESSMENT?

Filing your income tax return can be time-consuming and stressful. The process may become even more frustrating if you disagree with the way that the Canada Revenue Agency (CRA) assesses your income tax return. Perhaps you want to appeal a decision made by the CRA but are unsure of where to start. This simplified guide will give you some general information about the process of appealing your tax assessment. Below, you will find information on matters relating to federal income tax and provincial income tax in those provinces where the CRA administers and collects income tax on behalf of the province.

### **(a) Step 1: File an Objection**

If you are certain that you will need to appeal the decision of the CRA in your Notice of Assessment, the first step to take is to file an objection. If your dispute is over your personal income tax assessment, you must file an objection within one year of the deadline for filing the return over which the dispute arises (generally April 30 of the following year), or within 90 days of the date on which the CRA mailed you your Notice of Assessment, whichever is later. For all other disputes (such as corporate taxes) the deadline to file an objection is 90 days after the CRA mailed the Notice of Assessment.

An objection states that you disagree with the basis for the calculation of the amount of tax set out in your Notice of Assessment. Your objection can be submitted online using the “My Account” feature on the CRA’s website, or can be sent to the Chief of Appeals at your local tax centre. You may use a standard form called a T400A, or you may simply write a letter detailing the reasons for your objection. In your objection, you must specify the reasons for your dispute and provide any supporting facts and/or documentation.

Your objection will be examined by an officer in the Appeals Division of the CRA. He/she will determine whether to allow or dismiss your appeal. If the appeal is allowed, you will receive a Notice of Reassessment reflecting the changes that have been made in response to your objection. If the appeal is dismissed, you will receive a letter confirming your earlier Notice of Assessment.

If you are unsatisfied with the outcome of your objection, you may file an appeal with the Tax Court of Canada. You may also appeal to the Tax Court if 90 days passes with no decision on your objection. However, if the issue that you wish to appeal is solely a provincial income tax matter, you must file an appeal with the provincial superior court, rather than the Tax Court. For example, if you have been denied a provincial tax credit, you will need to appeal to the superior court of your province.

### **(b) Step 2: Appeal to the Tax Court of Canada**

The Tax Court of Canada must receive your written appeal notice within 90 days of the mailing of the decision on your objection. Within the Tax Court there are two procedures: informal, and general (or formal).

**i) The Informal Procedure:** The informal procedure can be used for disputes in which the total amount of federal tax and penalties disputed is less than \$12 000 per assessment, or where the interest on federal tax and penalties is the only matter in dispute. To use the informal process, you must elect to do so in your appeal notice or in a letter to the court within 90 days of the response to your appeal. The informal procedure is generally less costly than the formal

procedure, and does not necessarily follow the legal and technical rules of evidence. For the informal procedure, you must submit your appeal to the Registry of a Tax Court of Canada, along with the \$100 filing fee. If the appeal is allowed, in whole or in part, this fee is refunded. The court may also choose to waive this fee if you can show that it will cause you severe financial hardship. Under the informal system, you may represent yourself, or have someone else such as a lawyer represent you.

When the informal system is used, there are strict time restrictions placed on the CRA and the Tax Court that will assist you in ensuring that your dispute is settled quickly and efficiently. The CRA must respond to your appeal within 60 days of receiving it from the Registry of the Court. The appeal must be heard within 180 days of the last day that the CRA has to file their reply. The Court must issue its judgment within 90 days of the conclusion of the hearing. If you are more than 50% successful in your appeal, the CRA may be ordered to pay some of your legal costs. If you are unsuccessful, you cannot be ordered to pay the fees of the CRA.

**ii) The Formal or General Procedure:** The general procedure is the default system of the court. If you do not choose to use the informal procedure, or if your appeal does not qualify for it, the general procedure will be used, regardless of the amount of the dispute. Disputes for more than \$12 000 will be dealt with through the general procedure, unless you choose to limit the amount of your claim to \$12 000. Under the general procedure, you may represent yourself, or you may get a lawyer to represent you. Corporations generally need to be represented by a lawyer. Fees for filing are much higher in the general system than in the informal system, and can be up to \$550.

In a general procedure appeal, the court strictly adheres to many procedural and legal rules. When the judgment of the court is issued, either party can be ordered to pay some or all of the legal fees of the other party. For these reasons, it is generally recommended that those interesting in pursuing an appeal under the general process consult with a lawyer.

### **(c) Step 3: Appeal to the Federal Court of Appeal**

If you have appealed to the Tax Court and are still unsatisfied, you may appeal to the Federal Court of Appeal. You must file your appeal within 30 days of the judgment from the Tax Court. If you used the informal process in the Tax Court, your grounds of appeal may be restricted in the Federal Court of Appeal. As appealing to the Federal Court is a complicated process, you will probably want to seek legal advice before beginning your appeal to the Federal Court of Appeal.

### **(d) Step 4: Appeal to the Supreme Court of Canada**

Once the Federal Court of Appeal has issued a judgment on your appeal, you may try to appeal to the Supreme Court of Canada. The Supreme Court is Canada's highest court. You must get the court's permission to appeal at this level. Again, if you are considering appealing your income tax assessment at this level, you will probably want to consult a lawyer.

Generally, the court will only grant leave for appeal when the case will have a substantial impact on that area of the law. Once a decision has been issued by the Supreme Court, there is no further appeal. The decision is final.

*The above information is intended for general information only. Please consult one of the following lawyers at Robertson Stromberg Pedersen LLP for legal advice pertaining to your unique situation:*

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*The contributions of Candice Grant and Reché J. McKeague in the preparation of this article are gratefully acknowledged.*