File Your Tax Return on Time and Stay Safe

Spring is the season to reflect on what we pay for through our taxes. We have a new federal Budget coming on April 19, when the government tells us what they will pay for to make our tax system "fairer", code for increased taxes. Check the Budget document to see how many times the Minister uses derivatives of the word "fair" in her Budget speech. Meanwhile, individuals should focus on their filing deadlines, April 30 and June 15.

Lest we forget: "Taxes" are compulsory unrequited payments to the government. They are "unrequited" because the benefits that governments provide taxpayers are not normally in proportion to their payments. The term "tax" does not include fines, penalties and compulsory loans paid to government. However, the government also uses them in exacting money from individuals.

The income tax system requires taxpayers to "voluntarily" self-assess their tax liability and file tax returns without demand or notice according to specified schedules. The term "voluntarily" is a misnomer. It is only voluntary in the sense of a colonel asking a private if he would like to volunteer to paint a fence by 3 pm today! In fact, the government has a big stick to ensure tax filing discipline.

There are severe consequences for not filing information returns when, and in the form, required. In addition to any tax payable, the Minister of National Revenue ("**Minister**") can impose penalties, make third-party demands, garnish income, seize property, and prosecute through the criminal process. Indeed, it is fair to say that the powers of the Canada Revenue Agency ("**CRA**") exceed those of most other government agencies and are subject to fewer constitutional and judicial controls. The *Income Tax Act* ("**Act**") is considered an administrative enactment to which, with limited exceptions, the *Charter of Rights and Freedoms* does not apply.

The basic tax rule in the Act is simple: every person resident in Canada during a given taxation year is taxable on his or her worldwide taxable income. The next 3000 pages of the Act go on to define how much tax is payable, when payable, and the consequences of non-compliance.

A taxpayer's tax filing requirements vary according to status, type of income earned, and credits claimed. Individuals need to file only if they have tax payable in the year. However, individuals should file returns even if they do not have any tax payable in a particular year. Filing a nil return protects the individual as it triggers the timeline within which the CRA may later reassess the taxpayer. This is one of the few limits on Ministerial powers and individuals should take advantage of it.

The filing of a proper return is the first step in the administration of the tax system. The Minister has virtual *carte blanche* in how long she takes to assess the taxpayer's return. In theory, the Minister is supposed to issue an assessment "with all due dispatch". In practice, the Minister has considerable latitude, and the assessment is valid even if not issued for a long time. The courts interpret "due dispatch" as "an elastic standard". As long as the necessary review proceeds at a pace that is reasonable in the circumstances, the Minister will not be in default. Hence, the statutory obligation on the Minister to assess the taxpayer's return with all due dispatch is administratively meaningless in most circumstances.

Nevertheless, notwithstanding any delay in assessments, filing of one's tax return has a distinct advantage: once assessed, absent fraud or misrepresentation, the CRA is limited to 3 years from the normal assessment period during which she can *reassess* the taxpayer. This statutory limitation is one of the few protective mechanisms in favour of the taxpayer.

The taxation year of an individual is the calendar year. The individual must file an income tax return in respect of the year if he or she is taxable in the year. However, it is generally prudent for an individual to file annual tax returns regardless of whether or not the individual believes that he or she has to pay tax for the particular year. Otherwise, the individual may be subject to interest and penalties if the CRA later claims that he or she was liable for tax in respect of that year.

An individual must also file a T1 return if he or she:

- Receives employment insurance benefits that are repayable;
- Splits pension income with their spouse;
- Is required to make CPP payments; or
- Received working income tax benefits in the year and wants to receive advance payments for the next year.

There are other circumstances in which an individual should file a T1 income tax return, such as, for example, where he or she wants to:

- Claim a refund of taxes;
- Claim a GST/HST credit;
- Receive child tax benefit credits;
- Apply non-capital losses to other years;
- Carry forward any unused portion of tuition, education, and textbook amounts; or
- Report earned income for RRSP purposes or keep the RRSP deduction limit up to date for future years.

The CRA can extend the filing period for any return. However, it rarely exercises its discretionary power to extend time and the Federal Court even more rarely grants judicial review of the Minister's decision. The Minister's decision must:

- Be made in good faith;
- Be impartial;
- Be in accordance with proper principles reflected in the 'policy and objects of the [governing] Act';
- Not take into consideration improper matters; and
- Not fail to consider matters that were of direct importance.

Hence, the message is clear: Do not rely on Ministerial discretion or on the Federal Court to upset the Minister's decision except in egregious circumstances of administrative abuse of power.

File on time and stay safe. It is cheaper in the long run and you will save legal fees.

Professor Vern Krishna, CM, QC, FRSC
Of Counsel, TaxChambers LLP (Toronto)

vern.krishna@taxchambers.ca
www.vernkrishna.com