

Taxpayers need a Bill of Rights

CRA needs to provide timely, accurate help

National Post (Latest Edition) · 20 Dec 2017 · Vern Krishna Professor Vern Krishna CM, QC, University of Ottawa, and Tax Counsel, Tax Chambers LLP (Toronto). Vern. Krishna@taxchambers.ca www.Vernkrishna.com

A basic and fundamental requirement of an effective tax system is that it should demand integrity from taxpayers, and administer the system in a similar manner for the benefit of taxpayers. In the interests of promoting “fairness for the middle class,” Canada should legislatively enact the Bill of Taxpayer Rights, give it some teeth and force of law, and ensure fair tax administration.

The Canada Revenue Agency (CRA) requires all taxpayers to declare their income voluntarily and honestly. The sanctions for not doing so are serious for taxpayers. However, the Agency has an equal obligation to provide taxpayers with complete, accurate, clear, and timely information. The evidence is overwhelming: The CRA is falling down in the performance of its public mandate. The victims of its failure, are low and middle income taxpayers who cannot afford expensive professional advice and turn to the agency for their information.

Canada did not legislate its Bill of Taxpayer Rights. Instead, we settled for an unlegislated declaration by the CRA of 16 so- called “rights,” which have no force of law. One of these is that the CRA will provide timely and accurate information to taxpayers. The evidence in the Auditor General’s Report proves otherwise. Taxpayers are not getting timely information, and, in many cases, are being given erroneous information.

The CRA processes about 30 million tax returns annually, and operates nine call centres to give individuals and businesses information about their taxes, credits, and benefits. The online services and telephone call centres are the primary ways for the public to obtain tax information. However, as the Auditor General’s Report to Parliament reveals, the CRA blocks more than half of the calls that it receives (about 29 million out of 53.5 million) from reaching either a tax agent or the automated self- service system. Instead, callers receive either a busy signal, or a message to go to a website, or call back later.

Last year, the CRA answered only 36 per cent of the calls that it received. The remaining 64 per cent of calls were either blocked, or directed to an automated self- service system. By blocking taxpayer calls, the CRA could report that it connected with about 90 per cent of calls from the public. This is the tantamount to a misrepresentation in a tax return. Indeed, if the CRA blocked even more calls from taxpayers, it could improve its statistical performance rating to 100 per cent.

Even more alarming, when the CRA did respond to taxpayer calls, it gave taxpayers the wrong answer almost 30 per cent of the time. Taxpayers who acted on the erroneous information would file incorrect tax returns, and consequently would face tax assessments, interest charges, and, possibly, penalties. Under the law, a taxpayer is responsible for any inaccuracies in his or her tax return, even if the error is due to incorrect information provided by CRA agents. Thus, the burden of fighting the assessment is on the taxpayer, who must pay the costs of litigation, interest charges, penalties.

Taxpayers face many frustrations in resolving their disputes with the CRA. As taxpayers know only too well, they must wait, and then, wait some more to resolve their tax disputes. They must file a Notice of Objection to their assessment and then wait. It takes about a year to assign the Objection to a review officer in the CRA, and then more months, or a year or two to resolve the matter. Taxpayers have no legal right to speedy access to justice. They must simply pay and wait. In the interim, pending resolution of the dispute, even if caused by incorrect information provided the taxpayer by the CRA, the taxpayer is charged non- deductible interest at five per cent, compounding daily, on any disputed taxes that are unpaid during the review.

To be sure, the Minister of National Revenue is required by law to consider the objection “with all due dispatch,” and either vacate, confirm, or vary it, and notify the taxpayer in writing. However, the CRA’s administrative review is a slow and long drawn out process, which can drag on for years. The tax courts have adopted a generous view of the meaning of “with all due dispatch,” and have said the words are not to be interpreted as meaning a fixed period of time.

Far from abiding by the law, the CRA is derelict in the performance of its public duties to taxpayers, and endangers the integrity and reputation of Canada’s tax system. Taxpayers have a duty to file their returns honestly, and with integrity. However, they have a corresponding right to timely and accurate information from the CRA in the administration of the tax system. Failure to provide such information will result in less voluntary compliance by taxpayers. Finance Minister Bill Morneau should enact the Taxpayer Bill of Rights into law in his next budget to show his colours for a “fair” tax system for middle income taxpayers.

TAXPAYERS ARE NOT GETTING TIMELY INFORMATION.