

# General Corporate — Commentary — Articles — English — Vern Krishna —, 2012-09-012 -- Tax Appeals: General vs. Informal

2012-10-05

## Search Details

Search Query: Table of Contents

## Delivery Details

Date: January 8, 2019 at 3:15 p.m.

Delivered By: VERN KRISHNA

Client File: GAAR

Vera Krishna explains the processes involved in Tax Appeals disputes with the Canada Revenue Agency (CRA) which involves filing a valid Notice of Objection to the assessed taxes, which goes to the Appeals Division for consideration and revaluation (see online: [www.tcc-cci.gc.ca](http://www.tcc-cci.gc.ca)).

## Tax Appeals: General vs. Informal

Date: October 5, 2012

 [Tax Appeals: General vs. Informal](#)

*Vern Krishna*

Taxpayers involved in disputes with the Canada Revenue Agency (CRA) must first file a valid Notice of Objection to the assessed taxes, which goes to the Appeals Division for consideration and revaluation (see online: [www.tcc-cci.gc.ca](http://www.tcc-cci.gc.ca)). Slightly more experienced CRA officials who have usually served in the audit department, staff the Appeals Division and will review their colleagues' decisions. Although Appeals Officers are purportedly "independent" of the auditors, we should remember they are all CRA officials by training and orientation.

A taxpayer who cannot resolve his dispute with the CRA can go to the Tax Court by filing a Notice of Appeal with the Court when the minister confirms his assessment. Alternatively, the taxpayer can file an appeal after 90 days of filing his Objection if, as is usually the case, the minister does not respond within that time. It will usually take the CRA that much time just to assign the file to an Appeals officer. Since time and interest charges work to the advantage of the CRA and not the taxpayer, it is prudent to pay the assessment and not accrue daily compounding of non-deductible interest at five per cent per year. Indeed, at that effective rate of interest, the Treasury could not find a better alternative investment in the financial markets today.

The appeal process in the Tax Court depends upon the route one can and does take. There are basically two options, informal and formal.

### Informal Procedure

The Informal Procedure is elective for tax disputes of less than \$12,000. Decisions of the Tax Court under the Informal Procedure cannot be appealed, but may be "judicially reviewed" by the Federal Court of Appeal. The informal track—equivalent to a small claims court process—provides taxpayers with a quick and inexpensive route for the settlement of tax disputes. Since approximately 70 per cent of income tax appeals involve amounts of less than \$12,000, the procedure is an expeditious way of processing tax disputes.

The following rules apply to informal appeals:

- The appeal must be in writing;
- The appeal must set out the reasons for the appeal and the relevant facts;

- The minister is generally required to submit a reply within 60 days from the time when the taxpayer files his notice of appeal;
- The Tax Court must hear the appeal within 180 days of the minister's reply;
- The court must issue judgment within 90 days of the hearing of the appeal.

Thus, the entire appeal process can be completed within less than a year from the date that the taxpayer files his Notice of Appeal and chooses the Informal Procedure. This compares favourably with the more formal General Procedure for appeals above \$12,000, which can take several years and cost a lot more money.

This is a good procedure for individuals who wish to represent themselves. Self-represented taxpayers should understand, however, that it is only the procedure that is simple and fast. The Tax Court is bound by the *Income Tax Act* for the substantive law, which is usually complex and often incomprehensible even to tax specialists. The taxpayer can also have an agent, who does not have to be a lawyer, represent him.

### **General Procedure**

The General Procedure of the Tax Court of Canada, which is formal, strictly controlled and expensive, applies where federal tax for a year exceeds \$12,000.

A taxpayer can represent themselves in a formal appeal or have a lawyer represent them. Non-lawyer agents are not allowed to appear before the Tax Court of Canada in a General Procedure appeal.

The General Procedure has formal rules of evidence, documentary and oral disclosure through examinations for discovery. The formal rules are time consuming and expensive with minimal cost recovery for successful appellants. Decisions of the Tax Court following such an appeal have precedential value.

In contrast with the Informal Procedure, there is no pre-determined time frame for completion of the appeal in the general process. Thus, cases involving a formal appeal may extend over many years.

The choice of appeal route is a function of time, legal fees and accruing interest charges on unpaid assessments. Under the prevailing system, it is to the economic *advantage of the* government to protract any dispute with the CRA and collect interest at above market investment returns. Hence, after paying the assessment, it behooves the taxpayer to push their case forward as rapidly as possible in the Tax Court.

*Vera Krishna, CM, QC, FCGA*, is counsel to Borden Ladner Gervais, LLP (Barristers & Solicitors) and the executive director of the CGA Tax Research Centre at the University of Ottawa, [vkrishna@blgcanada.com](mailto:vkrishna@blgcanada.com).

### **Procedure overview**

The following is an overview of the general and informal procedures:

#### **Representation**

General: by self or lawyer; Informal: by self, lawyer or agent.

#### **Procedure**

General: similar to procedures now existing in most courts; Informal: no formal procedure required except for filing the appeal in writing.

#### **Evidence**

General: strict rules apply; Informal: rules are flexible.

## Appeals

General: to the Federal Court of Appeal; Informal: review by Federal Court of Appeal on questions of law and jurisdiction.

## Precedential value of case decisions

General: Yes; Informal: No

## Time frame

General: no mandatory time frame for completion; Informal: explicit time deadlines for the CRA and the court. Maximum of 60 days between filing of appeal and reply, 180 days between reply and hearing, 90 days between hearing and decision.

*Vern Krishna, CM, QC, FRSC is Tax Counsel, Borden Ladner Gervais, LLP, and Professor of Common Law and Executive Director of the Tax Research Centre, University of Ottawa.*

*vern.krishna@taxchambers.ca*

Copyright © 2012 Vern Krishna. Reproduced with permission.

End of Document

© 2019 Thomson Reuters Canada Limited.