

General Corporate — Commentary — Articles — English — Vern Krishna —, 2012-09-041 -- Tax Revolutions

2012-11-01

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

Vern Krishna discusses the need for Tax collectors as they relate to the functioning of governments and implementation of social policies. Why then are they so unpopular? Because, as history teaches us, they overreach and use heavy-handed collection procedures against the vulnerable of society.

Tax Revolutions

Date: November 1, 2012

 [Tax Revolutions](#)

Vern Krishna

Tax collectors are necessary to the functioning of governments and implementation of social policies. Why then are they so unpopular? Because, as history teaches us, they overreach and use heavy-handed collection procedures against the vulnerable of society.

We see the antipathy towards tax collectors in the Bible [Luke 18:9–14], which recounts the parable of the Pharisee and a tax collector who went up into the temple to pray. The Pharisee, standing by himself, prayed thus: “God, I thank you that I am not like other men, extortioners, unjust, adulterers, or even like this tax collector” “But the tax collector, standing far off, would not even lift up his eyes to heaven, but beat his breast, saying, ‘God, be merciful to me, a sinner!’”

In England, King John’s penchant for increasing feudal taxation without consulting his noblemen precipitated the creation of the greatest constitutional document—*Magna Carta*—in 1215. The *Charter* propagated a form of “tax farming,” whereby the King extracted promises from his nobles of soldiers for battle in exchange for feudal lands.

A century and a half later, the grievances of a poll tax on all males and females over the age of 15 caused the Peasant’s Revolt in 1381. Hume’s *History of England* captures the drama of the event:

The first disorder was raised by a blacksmith in a village of Essex. The tax-gatherers came to this man’s shop while he was at work; and they demanded payment for his daughter, who he asserted to be below the age assigned by the statute. One of these fellows offered to produce a very indecent proof to the contrary, and at the same time laid hold of the maid: which the father resenting, immediately knocked out the ruffian’s brains with his hammer.

Taxation has long been the instrument of persecution. In England, for example, Jews were forbidden from joining any of the artisan guilds and could not own land. Thus, confined to money lending and finance, they were taxed on their goods, chattels, debts, gifts, and through licences, fines, and ransoms. The penalties for non-compliance with the tax laws were severe: imprisonment, property confiscation, seizing of women and children, gouging out eyes, extracting teeth, and other cruelties. Indeed, Jews were considered such a valuable economic resource that they were even forbidden from emigrating for fear of undermining the tax base of the country.

France introduced an income tax in 1355 to finance the Hundred Years’ War. The rate was set at 4 per cent on the rich, 5 per cent on the middle class, and 10 per cent on the poor. By 1789, taxation was one of the leading causes of the French

Revolution.

The British, equally creative and short-sighted in their colonies, imposed a tax on salt [the *Salt Act*] in India, claiming a monopoly on all of its production and distribution. Tax collection was subcontracted to oppressive salt agents. On March 12, 1930, Mahatma Gandhi began his now famous 241-mile march to Dandi (on the west coast of India) to protest the tax on an essential ingredient of food. Thousands of his followers on the march were beaten, arrested, and thrown in jail. A year later, the tax was reduced, but the damage was done. The nonviolent political struggle against the *Salt Tax* was a significant step on the road to Indian independence, which became the first step in the eventual dismantling of the British Empire.

To be sure, the techniques of the modern tax collector are more dignified, but not necessarily more sensitive. Fast-forward to Canada in 1984. The Conservatives, in opposition at the time, created a task force to study the behaviour of the Canada Revenue Agency. The task force documented its conclusions of the tax collectors' proclivity toward oppressive and insensitive conduct. "What we heard disturbed us deeply. We were distressed by the fear with which ordinary Canadians greet a call from the tax department, a fear that is sometimes cultivated by [the CRA]."

The report didn't stop there.

Another impression that was deeply instilled in us during our tour was that the tax burden is falling disproportionately on Canadians of modest means. ... The complexity of the many provisions affecting lower-income Canadians often causes serious resentment. ... These taxpayers can least afford the costly professional assistance needed to defend their rights. Another factor that undermines the rights of ordinary Canadians is the sweeping powers given to the [revenue agency]. In some cases, they are even greater than the powers of the police.

Upon attaining power, however, the Conservative government merely issued an impressively titled *Declaration of Taxpayer Rights*, but did not enact the declaration as a taxpayer bill of rights.

Thus, unlike Americans—who have their *Taxpayer Bill of Rights* codified in their *Internal Revenue Code*—Canadian taxpayers do not have equivalent legal protection.

Canadians, with characteristic politeness, suffer from the costs of complying with the ever-increasing complexity of a badly drafted tax statute, escalating legal and accounting fees, long delays in the resolution of disputes, oppressive procedural rules, draconian interest charges, and heavy-handed collection procedures.

The *Income Tax Act*¹ deems an assessment to be valid and binding on the taxpayer even it contains an error or defect, or has been incorrectly calculated, or improperly issued. The burden is on the taxpayer to show that the assessment is wrong. Unlike the two-year limitation rule in civil litigation, the taxpayer has only 90 days from the mailing of the notice of assessment, regardless whether he receives the mail, to file his objection or lose his rights of appeal. The rule places an intolerable burden on taxpayers who cannot afford high professional fees in prolonged litigation. The rule effectively denies middle-income taxpayers—who pay the most in taxes to support the government's treasury—access to justice in tax law.

To be sure, tax collectors must perform their duties to ensure a fair system of social policy and the smooth functioning of governments.

That does not mean, however, that the system should be heavy handed on vulnerable individuals who feed the public treasury the revenues that pay the collectors.

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.

Footnotes

1 R.S.C. 1985, c. 1 (5thSupp.).

End of Document

© 2019 Thomson Reuters Canada Limited.