

## Twelve Rules that Protect the Tax Collector

By

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Tax rules protect the Tax Collector. They are not intended to protect taxpayers. Taxpayers who do not comply with the rules lose all their rights. There is no Charter protection for taxpayers.

Rule 1: Taxpayers must voluntarily self-assess their tax liability and file their tax returns without demand or notice according to the timelines set out in the *Income Tax Act (ITA)*.

The Canada Revenue Agency (“CRA”) will check returns for mathematical accuracy and ensure that they comply with statutory requirements. For example, the Minister will compare an individual’s tax return with information slips that his employer or investment dealer files in tax reporting slips.

Rule 2: The Minister will send the taxpayer a Notice of Assessment, which determines the amount of tax, if any, that the taxpayer owes. The assessment is *deemed* to be made on the day that it is mailed or electronically transmitted. The CRA can post the Notice to the taxpayer’s My Account or My Business Account and, once uploaded, it is considered “available” to the taxpayer.

Rule 3: The Minister is required to issue the Notice of Assessment “with all due dispatch” and send it to the address shown on the taxpayer’s return either through the mail, electronically or, in rare instances, by personal delivery.

Rule 4: The requirement to assess taxes with all due dispatch is hollow. The taxpayer can seek judicial review in the Federal Court for the Minister’s tardiness in assessing. In practice, the courts interpret the statutory duty so leniently that the Minister can take as long as she wants. The probability of obtaining an order of *mandamus* [Latin for “we command”] is virtually zero. It is best for the taxpayer to sit on her hands and wait. Here, we see the DNA of procedural tax rules.

Rule 5: No Notice of Objection, No Appeal, Just Pay. The Assessment triggers the objection period that applies to the taxpayer. It is a red flag. The Notice of Objection is the first procedural step in disputing the Minister’s assessment. The general rule is that the taxpayer must file her Objection in *writing* within 90 days of the date of it being mailed to the address on the return or made available to the taxpayer. Telephoning the CRA, if you can even get through, is not enough.

Rule 6: What happens if the taxpayer never receives the Notice of Assessment because Canada Post, or electronic service, fails to deliver it, or the taxpayer changes her email address. The taxpayer is generally out of luck and loses the right to appeal. The CRA need only establish that the Assessment was sent to the right address. Then, the taxpayer is deemed to have received it.

[There is a discretionary provision available if an individual files an adjustment request after the limited period].

Rule 7: The CRA decides first and then decides again. The Notice of Objection triggers an administrative appeal to the CRA, which reconsiders its own initial decision to assess. The assessing officer and the appeals officer are both employees of the CRA. However, there is no judicial review for the decision maker adjudicating its own previous decision.

Rule 8: The CRA is not bound by its own errors. A Notice of Assessment is *deemed* to be valid and binding notwithstanding any error, defect, or omission or in any proceeding under the *ITA*.

Rule 9: The administrative appeal to the CRA can take anywhere from 12 months (simple appeals) to 6 years [rules during Covid-19 extend these timelines]. During this time, the taxpayer is liable for non-deductible interest, compounded daily at a prescribed rate (approximately 6%) on any assessed amounts. Hence, it is prudent to pay up front before any legal appeal, which can easily add 4-5 years in simple cases and longer during Covid.

Rule 10: Any interest that is eventually refunded on a successful appeal is fully taxable as income.

Rule 11: Upon filing his Notice of Objection, the taxpayer has two choices:

- (1) He can wait for months (or years) for the Minister to confirm or reassess his returns; or
- (2) He can file an Appeal to the Tax Court of Canada if the Minister does not respond within 90 days of service of the Objection.

Rule 12: A taxpayer who receives a decision on his Objection has 90 days (plus any Covid-19 extensions) to appeal to the Tax Court of Canada. The Registry of the Court must *receive* the Notice of Appeal within the time limits.

The twelve rules protect the Crown. They are not intended to protect taxpayers, who have minimal procedural rights.

**Taxpayers who do not file timely objections and appeals lose all rights.**

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