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Vern Krishna: Auditor General's report shows Taxpayer Bill of Rights is merely feel-good PR



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Taxpayers can be excused for thinking the Canadian Taxpayer Bill of Rights gives them some actual rights.

In reality, the Bill is nothing more than a feel-good public relations document. The Nov. 29 Auditor General's Report confirms this.

The Canada Revenue Agency has a statutory obligation to respond to challenges filed by taxpayers "with all due dispatch." And that much ballyhooed Taxpayer Bill of Rights is supposed to guarantee both reviews and timely information.

The AG report paints a different picture. In 2014, for example, the CRA processed about 29.6 million income tax returns. Taxpayers filed objections to 66,864 of the returns for income taxes totalling \$4.8 billion. As of March 2016 there was a backlog of 171,744 objections for personal and corporate returns, representing more than \$18 billion of federal taxes. This is an increase of 300 per cent from \$6 billion in 2005.

Launching a tax appeal is a slow, drawn out process that has none of the speed and efficiency suggested by that phrase, "all due dispatch."

Throughout the process, which can drag on for years, taxpayers are charged non-deductible interest on their disputed, unpaid taxes. The current interest rate is five per cent, compounded daily.

There are three principal steps for resolving income tax disputes with the Canada Revenue Agency:

- The first is to file a proper Notice of Objection. The mechanics of this step are fairly simple, but the deadline is tight. A taxpayer must file the objection within 90 days of the date that it is mailed, or within one year of the due filing date. The deadline is strictly enforced — even if Canada Post fails to deliver the notice of assessment to the taxpayer.

A proper notice includes the identity the taxpayer, the assessment objected to, the years involved, and the reasons for the objection. It should also point out the relevant provisions of tax law and any other legal authorities that give substance to the taxpayer's objection.

- The second step involves an independent and impartial administrative review with “all due dispatch.” The Minister of National Revenue is bound by statute to reconsider the assessment with all due dispatch and then either vacate, confirm, or vary it, and notify the taxpayer in writing. In practice, the file is reviewed by an officer with the CRA's appeals branch. A taxpayer can expect to wait up to a year for initial contact with that appeals officer.

It takes an average of 143 days to resolve low complexity objections, and these represent approximately 60 per cent of the objections filed each year. The CRA resolves about 65 per cent of objections in favour of the taxpayer. It canceled almost \$1.1 billion in penalties and interest in 2016.

It's interesting to note that when CRA has to return challenged funds to taxpayers, it must return the money with interest. The CRA currently pays three per cent interest on the returned money — and taxpayers have to pay tax on that interest as income. To recap, taxpayers pay non-deductible interest at five per cent on unpaid taxes, and are taxed on any refunded interest at three per cent.

The average resolution time for medium and high complexity objections is staggering: 431 days for medium, and 896 days for high complexity files. Add in the initial contact time from an appeals officer, and medium complexity files can take more than two years to resolve, while high complexity files can linger up to three and one-half years. Some files go unresolved for half a dozen years or more.

The CRA is under no pressure to expedite files and become more efficient. The tax court follows precedents from 60 years ago, and those obviously predate widespread computer use. This gives the CRA almost complete discretion in deciding what constitutes a timely resolution. In several court decisions the courts have said that it is exclusively up to the Minister to decide how ascertain the liability of the taxpayer in any given case. The rulings say the words “with all due dispatch” are not to be interpreted as meaning a fixed period of time but are within the discretion of the Minister.

Taxpayers pay for the inefficiencies of tax administration in other ways. In 2015, for example, the CRA employed the equivalent of 1,138 full time employees and spent \$148 million on salaries and associated costs. Canadian taxpayers pay both for their own dispute resolution and for the costs of government administration in resolving other taxpayers' disputes.

- All of this, and we haven't yet come to that third and final step in tax litigation. This is to have the case proceed in court, and that adds several years to the dispute.

Canadians are deluded if they believe they actually have an enforceable Taxpayer Bill of Rights. Canadians should instead accept John Milton's sage admonition that “they also serve who only stand and wait.” And wait they shall as governments pump more money into tax administration.

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