

General Corporate — Commentary — Articles — English — Vern Krishna —, 2012-08-080 -- What CRA wants, CRA usually gets

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Search Query: Table of Contents

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Vern Krishna discuss the challenges developed countries faced with expanding deficits and sovereign debt crises are stepping up efforts to curb tax avoidance and increase their tax revenues. To do so, they need to gather and exchange information between tax authorities.

What CRA wants, CRA usually gets

Date: September 20, 2012

 [What CRA wants, CRA usually gets](#)

Vern Krishna

Developed countries faced with expanding deficits and sovereign debt crises are stepping up efforts to curb tax avoidance and increase their tax revenues. To do so, they need to gather and exchange information between tax authorities.

The *Income Tax Act* confers more than ample authority on the Minister of National Revenue to collect any such information. There are few legal limits on the minister's power.

The minister may request—more accurately, demand—any information (known as a request for information, or RFI) from any person for any purpose related to the administration or enforcement of the Act, and for providing assistance to foreign tax authorities pursuant to Canada's international treaty obligations under the *Convention on Mutual Administrative Assistance in Tax Matters* and *Tax Exchange Information Agreements*. In most cases, the taxpayer has 30 days to respond to the RFI.

Subject to a few restrictions in the criminal context, the provision gives the minister virtually unfettered latitude in the nature of the information that he can demand. The judicial threshold for relevance to the administration and enforcement of the Act in civil matters is low.

To be sure, in the criminal context, the Supreme Court has narrowed the virtually unlimited scope of the demand provisions by applying the *Charter of Rights and Freedoms*. In *R. v. Jarvis*, for example, the Supreme Court held that the section may be used against an individual only for the purpose of an audit, and not for the purpose of an investigation. Corporations cannot claim *Charter* relief in tax appeals.

The minister may demand production of any books, letters, accounts, invoices, statements, or other documents from any person. The person from whom the demand is made must respond within such "reasonable time" as is stipulated in the Notice of Demand. It is not necessary that the person from whom the information is sought be the person whose tax liability is under investigation. The fact that the giving of the information may disclose private transactions involving persons who are not under investigation and may not be liable for tax does not invalidate an otherwise valid demand for information.

A taxpayer can challenge a RFI on the basis that:

- The documents demanded are not germane or relevant to the issues between the parties;

- The minister is on a “fishing expedition” and not on a specific inquiry as to some taxpayer’s liability;
- The taxpayer has not been given a reasonable time to produce the documents; or
- The documents are privileged.

A demand for information constitutes a seizure, but is not considered unreasonable within section 8 of the *Charter*.

The minister can make the demand only in respect of information relating to named persons and for a purpose related to the administration or enforcement of the Act. The test is objective and is determined on the basis of the particular facts.

The demand for information must be a genuine and serious inquiry into the tax liability of some specific person or persons. The minister cannot be on a “fishing expedition” into the affairs of an unknown group of taxpayers. For example, a taxpayer cannot be compelled to provide a random sample as a check on the general compliance of some unidentified class of taxpayers.

The minister will stipulate a time or date—usually 30 days—in the RFI. Whether the stipulated period is reasonable depends upon the volume and complexity of the information demanded and the ease with which the taxpayer can obtain the information.

The minister may also demand information in respect of unnamed persons, but only pursuant to a court order authorizing the “fishing expedition.” The minister may apply for the order based on an *ex parte* application.

The judge must be satisfied that:

- The unnamed person or group of persons is ascertainable; and
- The demand is made for the purpose of compliance with the *Act*.
- The party from whom the information is demanded may seek a review of the order within 15 days after its service.

Going forward, countries will use increasingly sophisticated technology to expand their tax information exchange networks to ensure more efficient collection of taxes. Absent *Charter* protection of property rights, we can expect the Canada Revenue Agency to use its ministerial powers to extend Requests for Information to further intrude into the personal and business affairs of individuals and corporations.

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