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EXPECT THE BEST

Cash Crunch? Delaying Tax Payments Can Be Expensive

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Originally published in *Blaneys on Business* (December 2011)

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Times are tough. What with economic uncertainty, the sovereign debt crisis, global financial meltdown, etc. one has to wonder where it will all end. Closer to home, many individuals are facing their own economic uncertainty and are looking for ways to increase their cash flow. So the question often comes up, "What if I delay paying my tax"?

In this case we are talking about deciding to pay income tax late. We are *not* talking about failing to file the required returns or misrepresenting one's income. These can lead to severe penalties, including criminal prosecution. Those who decide to delay payment or dispute the amount owing, however, do have options.

Tax returns must be filed by individuals for each calendar year by April 30th of the following year. In the case of corporations, returns must be filed within six months of the end of the fiscal year of the corporation. However, the tax owing must be generally paid in installments during the course of the year. When a return is filed, the individual or corporation will receive a Notice of Assessment, usually within several months of filing. In this Notice of Assessment, the Canada Revenue Agency (CRA) will indicate whether it agrees or disagrees with the income reported and will assess the tax accordingly. If one disagrees with the Notice of Assessment, a Notice of Objection may be filed within 90 days of the date of the Notice of Assessment.

The Notice of Objection sets out the reasons, if any, that amounts are disputed, and gives rise to a review of the assessment within the CRA. Such a review normally takes from six months to a year and, during this time, the CRA is prevented from enforcing any collection with respect to the amount owing. If the taxpayer is still not satisfied with the review of the Notice of Objection, a further appeal may be filed in the Tax Court of Canada, thereby allowing for a second hearing of the dispute and further extending the period during which the CRA is prevented from taking any collection action. An appeal to the Tax Court of Canada can last for several years and the payment of tax will be deferred, consequently, for a lengthy period. The downside of such a process is that interest on these unpaid taxes is constantly accruing – compounding daily, in fact. Even in the current low interest rate environment the CRA charges five per cent on unpaid taxes, so the costs of delaying payment can mount significantly.

These tax filing and paying rules apply equally to individuals and corporations so it is open to companies, as well, to explore the utility and advisability of delaying their income tax payments. The situation is different, however, with respect to source deductions and GST/HST. Company directors can be liable, personally, for unremitted source deductions (such as employee income tax, CPP contributions and EI premiums) and for unremitted GST/HST. There are exceptions to this liability. A director, for example, may be assessed for this only within the first two years from the date that he or she stopped being a director. There is also a "due diligence" defence through which a director can argue that he or she did everything practicable to ensure that the company's source deductions were remitted on time. Regardless, the courts are becoming less and less sympathetic to directors who fail to discharge the obligation of ensuring that such amounts are remitted to the CRA on a timely basis.

To summarize, choosing not to pay one's taxes on time (as opposed to not properly reporting one's income) can alleviate current cash flow difficulties. The future cost, however, will be significant. We would not suggest that this particular approach to cash flow management be considered except in the most extreme circumstances. ■