Taxpayers Have Timing Obligations to the CRA But, Courts Point Out, CRA Has Obligations, Too

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Readers of *Blaneys on Business* may recall an article in the December, 2011 issue suggesting that, while there is generally no requirement to pay taxes owing immediately, the process of delaying payment can prove to be an expensive proposition, considering the interest that accrues on unpaid taxes.

Two recent court decisions, however, provide a vivid reminder that timing obligations are not the taxpayer's alone. The Canada Revenue Agency (CRA) has them, too.

Once again, the process begins with filing an income tax return (both for individuals and corporations) within the time prescribed in the *Income Tax Act* (the Act). The Act then requires the CRA to examine these returns "with all due dispatch" and then issue a Notice of Assessment. A Notice of Assessment will indicate what taxes are payable as well as any interest that is owing on taxes unpaid at the time. This interest continues to accrue on a daily basis until the taxes are paid.

The CRA may then review and reconsider a return and reassess the taxpayer by issuing a Notice of Reassessment within three years from the date of the original assessment. (There is no time limit if there is fraud or misrepresentation). Where an assessment or reassessment is issued, if the taxpayer disagrees, he may file a Notice of Objection and the CRA must again, "with all due dispatch," reconsider and then vacate, confirm or vary the assessment or reassessment.

But what if the CRA delays the performance of its obligations in either the assessment or objection process?

Two recent developments are very interesting in this regard. First, in a 2013 case in Winnipeg, the CRA was sanctioned by the Federal Court for unwarranted delay in issuing Notices of Assessment and refunds in cases where investors had invested in a certain tax shelter.

The court found that the CRA had abused its authority by attempting, through this delay, to discourage taxpayers from investing in tax shelters.

More recently, the Ontario Superior Court of Justice found that the CRA was not entitled to collect the interest that had accumulated on unpaid taxes where the CRA had failed to deal with the Notice of Objection on a timely basis and essentially had "sat on the file" for approximately three years.

While the court did not specifically discuss the CRA's motives in this latter case, it was apparent that the intent, again, was to discourage tax shelter investments that the CRA did not like.

None of this is to suggest that taxpayers should not pay their taxes on time. But it does point out that the CRA has obligations to the taxpayer and that the taxpayer has certain judicial remedies where the CRA does not discharge its obligations in an appropriate manner.

In essence, the courts are saying that, when it comes to discharging tax obligations, it's a two-way street and both sides have to play fair.