

## Practical Tips for Tax Disputes

1. A taxpayer is best served with a “team approach,” involving accountants, tax lawyers and financial advisors, in gathering information, advocating for the taxpayer and addressing tax disputes.
2. Where there is unreported income, errors or omissions, consider whether voluntary disclosure is available to minimize penalties.
3. Take pro-active steps to manage the audit:
  - (a) Have an initial meeting with the auditor--obtain confirmation of issues, years under audit;
  - (b) Assign one person to manage/fulfill requests for information;
  - (c) Request that the CRA provide all information requests in writing;
  - (d) Maintain log of dates that information is requested/provided, and
  - (e) Respond to all information requests in writing and maintain copies of all materials submitted to the CRA.
4. Carefully review requests for information from the CRA to ensure that the request is supported by a genuine and serious inquiry into the tax liability of specific person. Ensure privileged communications are not inadvertently provided to the CRA.
5. Consider statute-barred issues:
  - (a) Has a waiver been requested? Narrow the language to the specific matter(s) and year(s) under audit. Consider separate waivers for separate issues/different taxation years.
  - (b) Has the CRA alleged misrepresentation attributable to neglect, carelessness, willful default, or fraud?
  - (c) The Minister of National Revenue may assess “at any time” certain amounts (e.g., Part XIII non-resident withholding tax).
6. Provide a detailed response to audit proposal letters. Consider requesting the involvement of the CRA Audit Team Leader in respect of “thorny” issues. Consider referring complicated matters to CRA Headquarters for an opinion based on a joint statement of facts (but recognize the risk of an adverse opinion and the fact that it may be a challenge to move the CRA auditor from this opinion).
7. Review the notice of reassessment carefully, including CRA Form T7WC. Obtain the Audit Report (CRA Form T20). Consider facts/assumptions relied upon by the CRA. Consider making a request under the *Access to Information Act* or *Freedom of Information Act* to obtain additional information.
8. If the reassessment is a nil reassessment and the reported loss is adjusted in the reassessment, apply for a loss determination--this allows an objection to be filed for the loss year and starts the clock running on the “normal reassessment period”. Losses incurred and adjusted in one year may be carried forward to a subsequent taxation year in which taxable income is earned and an objection to the loss adjustment may be filed for the subsequent year.
9. Diarize the deadline for filing a notice of objection. Otherwise, consider applying for an extension of the deadline to object. Move quickly.
10. Consider paying amounts assessed, even if objecting to a reassessment. If the taxpayer is not paying the tax in dispute, compound, non-deductible interest on tax and penalties (if assessed) accrues while the objection is outstanding. “Large corporations” must pay 50% of the amount assessed upon issuance of the notice of reassessment. Collection restrictions do not apply to certain taxes assessed (i.e., GST/HST, employee withholdings, etc.).
11. Prepare a detailed notice of objection - generally, reduces the need for subsequent submissions, may help eliminate future surprises, provides a backbone for a Notice of Appeal. Adhere to requirements for extensive detail which must be contained in large corporation objections. Consult tax counsel. Be alert to provincial only issues - is a separate objection required?



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