

Tax memo

Canadian tax updates



TCDR alert: CRA policy on access to audit reports— Informal disclosure should be the norm, not the exception

CRA auditors are still not always forthcoming when presented with informal requests from taxpayers. This is despite a recent CRA document that states taxpayers should not have to make a formal access to information request to obtain documents (e.g., audit and appeals reports.)

May 8, 2012

This *Tax memo* describes the CRA's stated policy on taxpayer access to CRA audit and appeals reports and other documentation supporting an assessment, and suggests a course of action if the information requested is not forthcoming.

Background

Often, a taxpayer who has been reassessed and wishes to obtain more details on the reassessment is advised to make an informal request to the Canada Revenue Agency (CRA) auditor for a copy of the T20 Audit Report. Unfortunately, in some cases, the CRA auditors refuse to provide this information unless the taxpayer makes a formal request under the *Access to Information Act* (ATIA). In too many instances, the delays involved in making a formal access to information request deter taxpayers from ever obtaining the audit report.

The audit report and supporting working papers contain useful information, such as the factual assumptions made by the auditor and the legislative provisions and case law relied upon in raising the assessment. This may help taxpayers understand the basis for the assessment, refute or correct assumptions and better target their submissions on appeal. A similar report—the T401 Appeals Report—is also prepared by the appeals officer at the conclusion of an appeal and generally is available upon informal request by the taxpayer.

CRA's stated policy: transparency and access

In CRA Pamphlet P148 “Resolving Your Dispute: Objection and Appeal Rights under the Income Tax Act” (2011), the CRA lists some of the resources available to taxpayers to assist in the preparation of an appeal, as follows:

- copies of your tax returns;
- reports prepared by an auditor to support your assessment;
- working papers prepared by an auditor that are relevant to the issues in your dispute;
- records of discussions between an appeals officer and an auditor regarding your assessment;
- copies of court decisions and relevant sections of legislation relied on by an auditor to support your assessment;
- scientific, appraisal and valuation reports relied on by an auditor to determine your assessment; and
- information obtained from a third party with whom you are doing business, such as sales invoices, purchase orders and cancelled cheques.

In general, an informal request for the audit report or the appeals report and supporting documentation should result in at least partial disclosure of these documents, unless an issue of confidentiality arises (for instance, when section 241 of the *Income Tax Act* prohibits the government from disclosing third-party information) or a document is subject to solicitor-client privilege between the CRA and the Department of Justice.

Access to information requests should be the exception...

However, we are aware of instances in which an informal request for the audit report resulted in a flat refusal from the CRA auditor, without further justification.

In such a case, before filing a formal request under the ATIA, it is useful to remind the auditor of statements in recent CRA Document 2011-0403751C6 “2011 STEP Conference – Q8 – Access to Information” (June 2-3, 2011). In a nutshell, this document states that Access to Information and Privacy (ATIP) Directorate promotes and encourages informal disclosure of documents by the CRA. The ATIA and the *Privacy Act* (PA) were intended to complement and not replace existing procedures for access to government and personal information.

The *Income Tax Act* already provides that taxpayers may have access to their own information, including details of any actions the CRA took or reports the CRA used to make the assessment. CRA Document 2011-0403751C6 expressly states that this type of information should be given to taxpayers without directing them to the ATIP Directorate to make a formal request under the ATIA or the PA, and that, in addition to creating delays, these requests add no value to the CRA and the requester.

Need more help?

Please contact any of the individuals listed below or your PwC tax adviser for more information – and how PwC can help you prevent, manage and resolve tax disputes.

Our Tax Controversy and Dispute Resolution (TCDR) network includes former CRA officials who can help you to better understand and evaluate the issues discussed in this *Tax memo*.

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