



BLACHFORD

TAX LAW

Tax Dispute Update 2023

Introduction

- Sponsored by Audit Shield
- Q&A
- Poll questions
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- Bio





1. Surprise! Deadlines for initiating a tax dispute are final

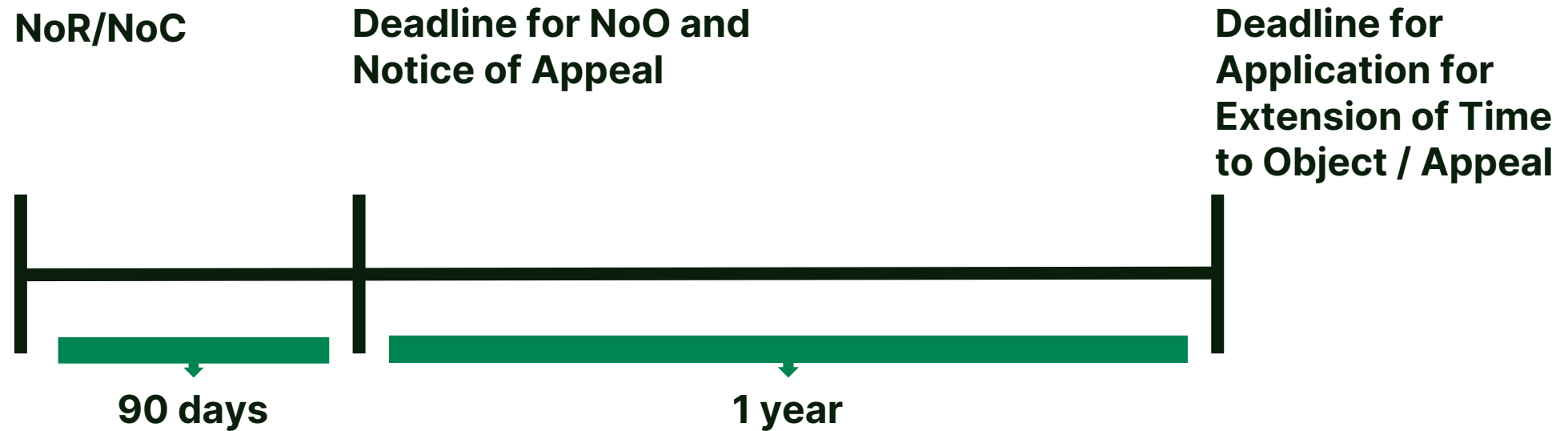


Tax dispute process



- Audit = Notice of Reassessment (NoR)
- Objection = NoR or Notice of Confirmation (NoC)
- * Jurisdiction

Tax dispute deadlines



Recommendations

- Be alert to deadlines
- Use notices of objection over T1/T2 adjustments



2. Surprise! The burden of proof is on the taxpayer



How does the burden work in reality?

- CRA takes a position, and we must prove it is wrong
- Burden is on a “balance of probabilities”
- CRA can rely on assumptions



Quotes from recent Replies

- “During the Taxation Years, the Appellant did not declare income from his contracting services on his tax returns.”
- “The Appellant had total income of \$634,758 in 2011....”
- “The Appellant appropriated the Cash Sales.”



Exceptions

- Gross negligence penalties: 163(2) ITA, 285 ETA
- Misrepresentation

Recommendations

- Start building your case early
- When the burden is on CRA, use this in negotiations
- Don't overly rely on the statute of limitations



3. Surprise! Your client's memory is not entirely reliable





4. Surprise! Your client does have documents





Interview with...



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5. Surprise! Settlements must be “principled”



Poll question: which of the following is NOT true?

Principled settlements...

1. Reflect the correct application of the law to the facts
2. Are based on compromise and reducing litigation costs
3. Differ from settlements in civil litigation between citizens
4. Are intended to reduce arbitrariness



Recommendations

- Don't mislead your clients on the settlement process
- Encourage your client to focus on what they can control



6. Surprise! Appeals to the Tax Court take a long time to resolve



Average objection processing times

- Medium complexity ~ 1 year
- High complexity ~ 2 years



Tax Court of Canada pre-trial steps

1. Notice of Appeal
 2. Reply (2 months)
 3. Idle with Tax Court – Then timeline request (3 months)
 4. Exchange list of documents (2 months)
 5. Examination for discoveries (2 months)
 6. Provide undertakings (2 months)
 7. Inform the Court whether settled (2 months)
-



Recommendations

- Help clients avoid tax disputes
- Help clients put their best foot forward at the audit or objection stage



7. Surprise! CRA won't cancel interest as part of settlement negotiations



Poll question: which of the following is NOT true?

1. Interest accrues on the amount ultimately owing throughout the dispute
2. CRA can collect GST/HST while the dispute is proceeding, but not income tax
3. A Tax Court judge can cancel interest
4. CRA's interest rate is currently 9% annually



Paying off amounts in dispute

- You can pay off part of the amount
- CRA will repay any amounts overpaid – plus interest
- Not an admission of guilt
- Not a sign of weakness



Recommendations

- Ensure your client knows that interest accrues throughout and that CRA will not cancel it as part of the settlement
- Encourage your client to pay as much as they can
- Help calculate potential settlement outcomes



Staying up to date and connected



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The Blachford Brief – quarterly e-newsletter



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First 7 Steps for a CRA Net Worth Audit: A Guide for Accountants in Canada

Slide: 21



Survey

1. Did you learn something new that is important to your work?

- Yes
- No
- Somewhat

2. How would you describe the level of the content?

- A little too simple
- Just right
- A little too technical

3. What is one thing that would have made the presentation better? *

0/200

4. Do you have any other feedback about the presentation?

0/200

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Thanks again to...



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8. Surprise! Judges cannot make decisions based on fairness



All that matters is the correct application of the law

- Tax Court judges do not have jurisdiction to make decisions based on fairness
- CRA's behaviour is irrelevant
- Judges are Type A
- Bombarded with sympathetic circumstances



Questions?

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