

BUDGET 2024: GOVERNMENT AUDIT POWERS TO BE SIGNIFICANTLY ENHANCED

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In Budget 2024, the Government has proposed to significantly expand the audit powers of the Canada Revenue Agency (the “**CRA**”) and heighten the consequences of a taxpayer not complying with information requests made by the CRA. The proposed expansion of the powers of the CRA is motivated by the 2018 Report of the Office of the Auditor General, which noted that responses to CRA requests for information are frequently ignored by taxpayers for lengthy periods of time. The expanded powers to be granted to the CRA are proposed to apply in respect of both amounts assessed under the *Income Tax Act* (Canada) (the “**Tax Act**”) and amounts assessed under other federal taxation statutes administered by the CRA, including the *Excise Tax Act*, the *Air Travellers Security Charge Tax Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, and the *Select Luxury Items Tax Act*.

“Notices of Non-Compliance”

In the normal course, the CRA issues notices of assessment identifying the taxes owed by a taxpayer in respect of particular taxation periods. Budget 2024 proposes to introduce another type of notice that may be issued by the CRA – a “Notice of Non-Compliance”. It is proposed that Notices of Non-Compliance may be issued by the CRA to a taxpayer who has not complied with a formal requirement or other notice to provide information or assistance to the CRA, irrespective of the scope or merit of the information request.

Technical Requirements

Budget 2024 proposes that a Notice of Non-Compliance must generally be served by the CRA on a taxpayer personally or sent by the CRA to the taxpayer by registered or certified mail. At the request of a taxpayer, a Notice of Non-Compliance will be reviewable by the CRA if the request is made within 90 days after the day on which the Notice was sent or served. Upon receiving a review request, the CRA will be required to advise the taxpayer of its review decision within 180 days of the date of receipt of the review request. If the CRA determines, in its discretion, that the issuance of a Notice of Non-Compliance was reasonable at the time of its issuance, the taxpayer’s sole remaining recourse will be to appeal the decision to a judge of the Federal Court within 90 days of being notified of the CRA’s review decision. (Generally, applications for judicial review to the

Federal Court are costly and, as long as the CRA has provided reasonable reasons for a decision, the Federal Court is frequently reluctant to disturb a decision made by the CRA.)

Consequences of the Issuance of a Notice of Non-Compliance

Budget 2024 proposes that where a Notice of Non-Compliance relating to a taxpayer is issued to the taxpayer or to a person that does not deal at “arm’s length” with the taxpayer (as defined for the purposes of the Tax Act), the normal reassessment period of the taxpayer (for any taxation year to which the Notice of Non-Compliance relates) will be extended by the period of time that the Notice is outstanding. A Notice of Non-Compliance will be considered to be outstanding until the day on which the recipient of the Notice has, to the satisfaction of the CRA, complied, or demonstrated that they have done everything reasonably necessary to comply, with each requirement or notice in respect of which the Notice of Non-Compliance was issued.

It is worthy of note that, under the actual proposed technical legislative amendments, taxpayers must apprise themselves of Notices of Non-Compliance issued to persons with whom they do not deal at “arm’s length”. Based on the wording of the proposed legislation, a taxpayer’s normal reassessment period may effectively be suspended if a person with whom the taxpayer does not deal at arm’s length has a Notice of Non-Compliance that is outstanding.^[1] In addition, it would appear that the normal reassessment period will effectively be suspended if a taxpayer seeks judicial review with respect to the issuance of a Notice of Non-Compliance. Finally, a special penalty will be imposed on taxpayers to whom a Notice of Non-Compliance has been issued equal to \$50 for each day the Notice is outstanding, subject to a maximum penalty of \$25,000.

Compliance Orders

Budget 2024 proposes to introduce potentially onerous penalties in cases where the CRA successfully obtains a “compliance order” from the Court compelling a taxpayer to comply with a request for access, assistance, information or documentation from the CRA. Where the CRA obtains a compliance order, it is proposed that a penalty may be assessed equal to 10% of the aggregate tax payable by the taxpayer in respect of each of the taxation years to which the compliance order relates. The penalty would apply in addition to any other penalties that may be imposed under the Tax Act for non-compliance with past information requests. However, the penalty would only apply if the tax owing in respect of one of the taxation years to which the compliance order relates exceeds \$50,000. It is notable that the CRA will be permitted to seek a compliance order before issuing a Notice of Non-Compliance.

Previously, compliance orders were frequently viewed by the CRA as lacking sufficient impact as the consequence of non-compliance was a contempt order rather than a financial consequence. The new penalty regime is viewed by the Government as a more effective means of encouraging taxpayers to satisfy information requests.

Information Under Oath

Budget 2024 proposes to empower the CRA to request that answers to any requirement or notice to provide information (whether oral or written) be provided (i) orally, under oath or affirmation, or (ii) by sworn affidavit.

[1] For tax purposes, “related persons” are generally deemed not to deal with one another at “arm’s length”. It is conceivable that taxpayers may have no contact with a parent, child or other related person, yet their tax position may be impacted by such a relative’s failure to address a Notice of Non-Compliance. Presumably, this is not the intended legislative result and clarifying amendments will hopefully be made at a later date.

By [Danielle Karlin](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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