

Disagree with GST and other tax owing issues?

You can informally appeal!

Elliot Schiller

As part of the controversial Omnibus Bill introduced by the Harper government in the fall, 2013, was an increase in the “amount in dispute” up to \$50,000 for GST/HST appeals, and up to \$25,000 for many other tax disagreements. That is significant, and probably a large enough amount to enable most small to medium size companies (SME’s) to fight what they are confident represents an incorrect or unfair ruling by Canada Revenue Agency (CRA).

As many of you know, generally a tax dispute arises from and follows three distinct events, an audit, an objection, and when that fails, an appeal to the Tax Court of Canada (Tax Court). An appeal to the Tax Court is not a very attractive alternative for most SME’s. It requires legal representation, and, can take years to resolve. If the amount in dispute is small, it probably isn’t worth the time, money, and distraction from your core business to fight it. Most business owners believe Tax Court is for large companies and not an affordable proposition for them. That all changed with Bill-60, the increase to \$50,000 of the disputed amount that can be heard as an informal appeal.

POLICY VS. LAW

The Income Tax Act is enforced based on the technical interpretation of the law by CRA. Technical interpretation is not absolute, and changes, and can be nuanced depending on current situations. In fact, CRA maintains the Income Tax Ruling Directorate, whose sole purpose is to present CRA’s current interpretation of the Income Tax Act. Further, technical interpretation is enforced by policy, and policy also can change depending on current circumstances. If you are in doubt about the fluidity of technical interpretations of the Income Tax Act, you need look no further than the approximately 60 page Income Tax Interpretation Bulletins and Technical News that summarize the specific interpretation document as issued to provide CRA’s interpretation of income tax law and is re-issued every three years.

While the Income Tax Ruling Directorate interpretation and accompanying bulletin is important to the Tax Court, it is not the Income Tax Act, the document used by the Tax Court to judge disputes.

INFORMAL REVIEW PROCEDURE

While the traditional appeals process (referred to as the General Procedure) is the only alternative for cases involving significant amounts of tax, or complex legal questions, the Informal Review Procedure claim settlement process is a very attractive route to resolve more traditional types of disputes for many SME’s. The informal procedure is a simplified and streamlined procedure that moves cases quickly to a hearing (akin to a small claims matter in the civil procedure). At an



Informal Procedure, both the taxpayer and the CRA (through the Department of Justice) will present their evidence and make arguments. The onus of proof in this case is with the taxpayer. The taxpayer needs to show that he was incorrectly assessed by CRA, and that the actual amount of taxation is not equivalent to the CRA assessment. The process consists of a “single day in court”, with a ruling by the judge. There are no second chances, no ability to go back to your office to locate further documents, or to bring the proper personnel before the judge. Therefore, just like in small claims matters, while the proceedings are informal, it is important that the taxpayer have all of his evidence and involved parties available at the hearing. There is only one chance to explain your case. Be prepared.

The good news for the taxpayer is that the Tax Court focuses judgements on the law and not the nuanced interpretation that so often resulted in the initial dispute with CRA. Further, the process does not require the taxpayer to incur any legal fees, it is informal, and, resolved in an acceptable timeframe (180 business days maximum).

With the new, higher limits available, SME’s can now feel confident that they will obtain the tax credits that they are entitled to, in a reasonable time period, with a reasonable chance to state their case before a Judge of the Tax Court, not CRA.

Elliot Schiller is a Director at Toronto’s Teeger Schiller Inc., a company that specializes in obtaining government funding. His clients receive over \$5 million annually to support their ongoing business innovation. E-mail eschiller@teegerschiller.com, visit www.FundingHelp.ca or phone 1-888-816-0222 Ext. 102.



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David Teeger

Director

David Teeger C.A., C.A. (S.A.) graduated as a Chartered Accountant in South Africa, and upon arrival in Canada he obtained his Canadian C.A. designation and joined Richter & Associates, a management consulting firm, where he concentrated his practice on various business sectors including household goods, fashion, automotive parts, public associations, and retail chains. He performed many roles in his 15 years at Richter, including managing the professional services organization in North America and all business operations throughout Europe.

David's professional capabilities include computer audits, feasibility studies, system analyses and assistance in the selection, negotiation and implementation of computerized solutions.

As a founding partner of Teeger Schiller Inc., he has focused his practice on consulting to management. His team of professionals has helped businesses select and successfully install a variety of ERP business solutions and add-on systems including business intelligence solutions to give new life to existing computer systems. David's clients not only rely on him to successfully manage the implementation of their new systems, but to manage the change that occurs in their organizations as a result of the use of these new tools.



Elliot Schiller

Director

Elliot Schiller, Ph.D., C.M.C. began his career as a Chemical Engineer working for Grumman Aircraft, in Long Island, New York. He obtained his Ph.D. at the University of Pittsburgh with funding from the U.S. Atomic Energy Commission, and, after being awarded a Presidential Fellowship, he went on to perform research and development activities at Brookhaven National Laboratory.

Since coming to Canada, he has primarily assisted consumer products and retail organizations in a variety of strategic management initiatives, traveling around the globe on behalf of his clients. In 1987, Elliot joined Richter & Associates, and it is here that he first met David Teeger.

As a founding partner of Teeger Schiller Inc., he has focused the SR&ED / Grant Division on obtaining grants and tax incentives for over 100 companies in the small to medium sized business sector. His team has provided services to the discrete / processing manufacturing, material development, textiles, apparel, automotive and computer sciences sectors. Annually, Teeger Schiller Inc. secures more than \$5 million in government funding to assist its clients in having their business initiatives supported by government funding.



304 Richview Ave., Toronto, ON M5P 3G5

Tel: 1.888.816.0222

info@teegerschiller.com • www.teegerschiller.com
Toronto • Montreal • New York • South Florida