

Doing It Right the First Time!

Avoiding the Most Common Tax Return Errors

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Preparing your tax return can be a daunting task. While nearly 70%¹ of individuals engage tax preparers to help them wade through the complexities of preparing a tax return, each year the Canada Revenue Agency (CRA) identifies common errors in personal tax returns. For example, statistics show that in recent years the CRA disallowed almost one of every five claims that were made for key tax credits and deductions² and assessed over \$1 billion in additional tax,³ primarily by comparing information on taxpayer returns to information provided by employers, financial institutions and other sources.

Making an error on your tax return can be costly for you as a taxpayer because if, for example, income is not reported or if deductions are claimed erroneously, the CRA will charge interest on any overdue tax amounts that you may owe.⁴ And if you fail to file your tax returns on time or underreport your income, you can incur significant penalties as well.

The CRA is also taking the problem of tax return errors seriously, as evidenced by the 2014 proposal calling for the registration of tax preparers,⁵ which is intended to identify and address common and recurring errors made by tax preparers before tax returns are filed.

In this report, we will review some of the most common adjustments identified by the CRA with a view to helping you prevent issues before you file your own 2015 tax return this filing season.

1. Reporting Information From Tax Slips

The chart on page 2 shows some common income tax slips that are issued for investment income, along with the deadline for distributing these slips for the 2015 tax year.

Be sure that you give your current mailing address to all financial institutions at which you have financial accounts so they can send you all of your tax slips. You may want to compare the tax slips that you receive for the current year to slips you've received in the past, to see if any might be missing. You may also want to compare income reported on investment statements to the amounts from tax slips, to see if there could be differences that could be due to slips that have not been received. If you haven't received an expected slip shortly after the deadline shown in the chart on page 2, you should contact the issuer to request a duplicate.

Common Income Tax Slips Issued to Investors

Tax Slip	Type of Income	Deadline for Distributing Slips for the Year Ended December 31, 2015
T3 - Statement of Trust Income Allocations and Designations	Trust income, including allocations of interest, dividends and capital gains	March 30, 2016
T4RIF - Statement of Income From a Registered Retirement Income Fund	Income from a Registered Retirement Income Fund (RRIF), including withdrawals	February 29, 2016
T4RSP - Statement of RRSP Income	Income from a Registered Retirement Savings Plan (RRSP), including withdrawals	February 29, 2016
T5 - Statement of Investment Income	Distributions of certain investment income, including interest, dividends and capital gains	February 29, 2016
T5008 - Statement of Securities Transactions ⁶	Dispositions of securities during the year	February 29, 2016
T5013 - Statement of Partnership Income	Partnership income, including allocations of interest, dividends and capital gains	March 31, 2016

If you are still missing a tax slip despite your best efforts to obtain it, you may be tempted to either submit your tax return without the missing information and adjust it later, or to wait until you receive the slip to file your return. Both of these approaches may be problematic. If you file your income tax return on time but fail to report income for the current year and one of the previous three taxation years, you may face a penalty equal to 10% of the income that you did not report in the current year. The court case highlighted on Page 2 ("Repeated Failure to Report Income") shows an example of a taxpayer who suffered this 10% penalty for repeated failure to report income. If you don't file your tax return on time and you have a balance of taxes owing on the payment deadline (May 2, 2016 for the 2015 tax year), the penalty is 5% of the outstanding balance, plus 1% of your balance owing for each full month your return is late, to a maximum of 12 months.

Repeated Failure to Report Income

In a case brought before the Tax Court in 2012, a taxpayer failed to report interest income of \$876 in her 2006 income tax return and also failed to report \$18,376 on her 2008 return. Since she failed to report income in 2008 as well as one of the three preceding tax years, the taxpayer was hit with a 10% penalty both federally and provincially, amounting to \$1,837.60 each.

A "due diligence" defence can be used for either the first or second failure to report income when the taxpayer has either made a "reasonable mistake of fact" or, at the very least, took reasonable precautions to avoid the event leading to the penalty.

The taxpayer in the case conceded that no such defence could be made for the 2008 taxation year, so she focused on the 2006 omission of the \$876 of interest income. She testified that this omission "was a reasonable mistake of fact. [It was] overlooked ... because she was not in the habit of earning and reporting interest income.... Viewed

objectively, the mistake was reasonable as the amount of unreported income in 2006 was less than 1% of the income which [she] reported” that year.

The judge agreed that since the amount of unreported income in 2006 was only 1% of her total income, her failure to report it was indeed innocent; however, the judge was not convinced “that a reasonable person in the same circumstances would have made the same mistake.” In the judge’s opinion, the taxpayer should have realized that she had not received her T5 slip reporting her interest income and yet she took “no actions” to get a T5. As a result, the judge felt that the taxpayer failed to take “reasonable measures to report all of her income in 2006 or 2008” and the penalty was upheld.

When you are missing information, you should estimate amounts from other available information. For example, if you haven’t received a T3 or T5 slip that reports investment income, information from monthly investment statements may help you to calculate the amount of the income.

Some entities, such as income trusts or partnerships, make distributions throughout the year and will determine the actual components of the distribution after year end. Since T3 and T5013 slips for these entities may not be issued until the end of March, publicly-traded trusts and partnerships are required to disclose information concerning distributions and allocations of income and capital within 60 days after the end of the taxation year. This information is collected and reported by CDS Innovations Inc. on their website at www.cdsinnovations.ca.⁷

Once you’ve estimated the amount of income, you should keep records documenting the payor’s name and address, the type of income involved and your calculations. For paper returns, you should attach this information to your return and indicate what you are doing to get any missing slips. If you file

your tax return electronically, you should keep this information on file in case the CRA requests it.

When you do receive any missing tax slips, if the amounts differ from estimated amounts reported on your submitted tax return, you can file form *T1ADJ - T1 Adjustment Request* with the CRA to report the correct amounts. Alternatively, once you have received your Notice of Assessment, you can alter your return online by visiting the “My Account” section of the CRA website⁸ and selecting the “Change my return” option.

2. RRSP Deduction

An RRSP is one of the best ways to save for retirement, providing a tax deduction for the amount you contribute and deferral of tax on income that is earned within the plan.

Your RRSP contribution limit for a year is 18% of your earned income for the prior year to a maximum amount (\$24,930 for 2015), minus your pension adjustment, plus any unused contribution room from prior years. To claim a deduction for a given tax year, contributions can be made at any time during the year or within 60 days of year end. To the extent that contributions are less than the limit in a year, the unused RRSP contribution room can be carried forward and contributions can be made in a future year.

Contributions in excess of the limits (plus a \$2,000 overcontribution allowance) may attract a penalty of 1% of the overcontribution per month. It is, therefore, important to check your available RRSP contribution room before putting funds into a plan. The CRA reports RRSP contribution room on your Notice of Assessment and online through the “My Account” service.⁹

If you expect that your marginal tax rate will be higher in a future year and you plan to wait to claim a deduction for your RRSP contribution in the future, don’t forget to report the contribution on your current tax return. On your 2015 tax return, you should report all RRSP contributions made from

March 3, 2015 to February 29, 2016. This allows the CRA to determine contributions that are available for deduction and to properly calculate your RRSP deduction limit.

If you want to claim a deduction for a contribution that was made prior to the current tax year and the contribution was not reported on a previous tax return, you should file *Schedule 7 - RRSP Unused Contributions, Transfers, and HBP or LLP Activities* for the appropriate year separately from your current year's tax return.

3. Foreign Tax Credit

If you have investment income from outside Canada, such as dividends on shares of foreign corporations, you may have to pay tax in the country where the income arises. Taxes may be withheld when the income is distributed. For example, dividends from publicly-traded U.S. corporations are generally subject to a 15% U.S. withholding tax under the Canada-U.S. Treaty.

One common error in calculating foreign tax credits is using the wrong exchange rates when calculating foreign income and taxes paid. Amounts must be converted from the foreign currency to Canadian dollars using exchange rates relevant to the transaction. For example, if income is earned evenly throughout the year, using the average exchange rate would be acceptable. For capital gains, actual exchange rates at time of purchase and sale of property would be more appropriate than using an average rate during the time the property was held. The Bank of Canada maintains a list of historical exchange rates that may be used for purposes of tax return calculations.¹⁰

An example will illustrate how much of an effect exchange rates can have on income that is reported on your tax return. Suppose you purchased a U.S. security for US\$10,000 when the exchange rate was US\$1.00 = CA\$1.00 and sold the security for US\$12,000 when the exchange rate was

US\$1.00 = CA\$1.30. The average exchange rate while you held the security was US\$1.00 = CA\$1.15. If you used the average exchange rate to convert both the proceeds of disposition and adjusted cost base, the capital gain would be \$2,300.¹¹ If, however, you used the actual rates in effect at the time of purchase and sale, there would be a capital gain of \$5,600.¹²

4. Other / Additional Deductions

There are two lines on the *T1 - General Individual Income Tax Return* that are seemingly used as a "catch-all" for deductions: *Line 232 - Other Deductions* and *Line 256 - Additional Deductions*. Although these names may sound like they are meant to allow any number of miscellaneous deductions, they each have a specific purpose.

Deductions that are allowed on *Line 232* include: overcontributions to an RRSP that were withdrawn, excess Registered Pension Plan transfers that you withdrew from an RRSP or RRIF and depletion allowances from investments in resource properties. A common additional deduction claimed on *Line 256* is for income that is tax-free under an income tax treaty (such as certain pension or social security benefits) that was included in income on your Canadian return.

The CRA specifically cited the following examples of expenses that are non-deductible but tend to be claimed erroneously as other deductions or additional deductions: support payments, legal expenses to collect or negotiate child or spousal support, legal fees you paid to get a separation or divorce or to establish custody for a child, funeral expenses, wedding expenses, loans to family members and a loss on the sale of a home.

You should make sure that an expense is deductible before making a claim, to prevent potential penalties and interest on your tax return. The CRA offers information on "What You Can Deduct" on their website.¹³

5. CRA Correspondence

It's important to make sure that you have your current address on file with the CRA, especially if you have moved recently, so you can receive CRA correspondence. Students may overlook this critical step when they transition between their regular home and a student residence.

To ensure that income, deductions and credits are properly supported, the CRA may send you a letter requesting that you submit supporting documentation for one or more tax return line items. Unlike a paper return, if you file your return electronically you don't submit your tax information slips, receipts, or other documents that were used to prepare your tax return; however, the CRA may later ask to see them. Since almost nine of every ten taxpayers filed their income tax returns online in 2015,¹⁴ CRA requests for additional information can be quite common.

You have 30 days to respond to a CRA letter requesting additional information and the CRA will frequently grant additional time if you have reasonable grounds for an extension and contact them within the 30-day time period. If you do not ask for an extension or submit the information within the 30 days, the CRA will assess your return based on the information available, possibly including additional income or denying deductions.

If you disagree with the CRA's assessment of your income tax return, you can file a Notice of Objection. You have 90 days from date of the Notice of Assessment to file *Form T400A - Objection*.¹⁵ You can request an extension within one year after the expiration of the time limit to file an objection.

If you disagree with the CRA's response to your objection, you can appeal to the Tax Court of Canada. Procedures are explained in CRA publication *P148 - Resolving Your Dispute: Objections and Appeal Rights under the Income Tax Act*.¹⁶ You have 90 days from the response to

the Notice of Objection to appeal the CRA's decision. You can request an extension within one year after the expiration of the time limit to file an appeal.

The court case highlighted on page 5 ("Timely Filing of Objections and Appeals") illustrates the consequences that ensued for one taxpayer who neglected to heed CRA deadlines. Since failing to act in a timely manner can mean the assessment of additional taxes or a loss of the ability to object to or appeal CRA decisions, it's important to make sure you act promptly when dealing with the CRA.

Timely Filing of Objections and Appeals

A 2013 Tax Court case involved a taxpayer who applied for a court order to extend the time to file an objection for a Notice of Reassessment she received on April 7, 2011 for the 2008 tax year.

The taxpayer filed an objection on April 21, 2012 but it was not accepted because it was beyond the 90-day deadline of July 6, 2011 to file an objection. The CRA, however, did advise her that she could apply for an extension of time and that the deadline for doing so was July 6, 2012.

She filed another objection on November 30, 2012 that was also denied since it was beyond the time limit.

The CRA informed her at this time that she was "out of time to apply for an extension."

In March 2013, she applied to the Tax Court for an extension of time to file a notice of objection arguing that "she did the best she could to comply with the law."

The judge was sympathetic and acknowledged that the rules surrounding objections are "complex" and that "taxpayers and their advisors sometimes fail to navigate (them) properly." Nevertheless, the judge denied the taxpayer's application, saying, "The legislative requirements are strict and relief cannot be granted on the basis of fairness alone."

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¹ Proposal – *Registration of Tax Preparers Program Consultation* published by the CRA, which is available online at <http://www.cra-arc.gc.ca/gncy/cmplnc/rtp-pipdr/cnslttnppr-eng.html>.

² Ibid.

³ Ibid.

⁴ The interest rate charged on overdue taxes for the second quarter of 2016 is five percent. Quarterly prescribed interest rates are published on the CRA website at <http://www.cra-arc.gc.ca/interestrates/>.

⁵ *Proposal – Registration of Tax Preparers Program Consultation*, op. cit.

⁶ Many financial institutions issue an account statement reporting gains and/or losses during the year in lieu of issuing a T5008 slip directly to clients. The electronic T5008 is still filed with the CRA.

⁷ Information from the Mutual Fund and Limited Partnership Tax Breakdown Service provided by CDS Innovations Inc. is available online at <http://services.cds.ca/applications/taxforms/taxforms.nsf/Pages/-EN-LimitedPartnershipsandIncomeTrusts?Open>.

⁸ My Account for Individuals is available online at <http://www.cra-arc.gc.ca/esrvc-srvc/tx/ndvdl/myccnt/menu-eng.html>.

⁹ Ibid.

¹⁰ Bank of Canada exchange rates are available online at <http://www.bankofcanada.ca/rates/exchange/>.

¹¹ Calculated as \$12,000 x 1.15 - \$10,000 x 1.15.

¹² Calculated as \$12,000 x 1.30 - \$10,000 x 1.00.

¹³ Information on “What You Can Deduct” is available on the CRA website at <http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/ncm-tx/rtrn/cmplng/ddctns/menu-eng.html>.

¹⁴ CRA *Individual income tax return statistics for the 2015 tax-filing season- Previous-year statistics*, available online at <http://www.cra-arc.gc.ca/nwsrm/t1stts-eng.html>.

¹⁵ Form T400A – Objection is available online at <http://www.cra-arc.gc.ca/E/pbg/tf/t400a/>.

¹⁶ CRA publication *P148, Resolving Your Dispute: Objections and Appeal Rights under the Income Tax Act* is available online at <http://www.cra-arc.gc.ca/E/pub/tg/p148/README.html>.

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