Collection Of Back Taxes
From Non-Residents Of Canada

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In my article "Can a Canadian be 'Resident Nowhere'", published in the October 2012 issue, I promised to discuss later whether the Canada Revenue Agency can collect back taxes from an individual who is not resident in Canada.

The question is: can the CRA hunt you down and collect tax if you depart from Canada owing tax, but leave no assets behind? Obviously, if you do leave assets here, the CRA can seize the assets to cover all or part of your tax liability.

As you will see from what follows, the answer to that question is a definite "maybe"!

There is a traditional rule that tax claims of one government will not be enforced in another jurisdiction. Even though most countries (including Canada) have legislation permitting the enforcement of foreign judgments, this does not apply to tax debts. A Supreme Court of Canada decision in 1963 *(USA v Harden)* confirmed this. The facts were that a United States District Court had entered a judgment against Mr. Harden, a resident of British Columbia, for over $600,000. An attempt to enforce the judgment in BC failed. The Supreme Court confirmed that a judgment based on a foreign tax debt would not be enforced in Canada.

However, Canada has entered into about 90 bilateral tax treaties with other jurisdictions, and a few of these treaties include a provision called "Assistance in Collection". Three of Canada's tax treaties currently in force with the United States, Germany and Norway contain such a provision that applies to tax debts generally. A new tax treaty signed with New Zealand in 2012 contains a similar provision, but that treaty is not yet in force.

In each of these tax treaties, a provision states that, if you leave Canada owing money to the CRA (including tax, interest, penalties and court costs), the CRA can ask that country to collect the Canadian tax owing, using its own tax collection system. Accordingly, if you have assets in any of those countries, or are earning income there, your assets or your income could be seized to pay your Canadian tax liability.

The Canada-US tax treaty has one restriction on this rule which the other treaties do not have. It contains an additional provision that forbids the US Internal Revenue Service from collecting Canadian tax from anyone who was a US citizen at the time the tax became payable.

While only four Canadian tax treaties provide for general assistance in collection, future revisions to other tax treaties may also contain such a provision, which may be retroactive if the two countries so agree.

Important facts to consider are the long reach of the CRA and its long memory. This was highlighted in the 1994 Tax Court case of *Montreuil*. Section 160 of the Income Tax Act was enacted to catch non-arm's length transfers of property by a "tax debtor", someone who owes money to the CRA and transfers property to a relative or friend (often a spouse). In the *Montreuil* case, the CRA used section 160 to collect unpaid tax many years later.

Mr. Montreuil left Canada in 1978 and moved to the Cayman Islands (a no-tax jurisdiction). He left behind a tax debt, including interest to the date of departure. The debt continued to grow because of interest charged on the debt.

He died in 1987. At the date of his death the debt had increased to $117,240. Interest continued to accrue thereafter.

Counsel for Mr. Montreuil's estate offered to pay the $117,240 from the estate as a final settlement. The CRA refused the offer, stating that the total amount due was $178,240. Nevertheless, Counsel sent a cheque for $117,240 to the CRA and the cheque was cashed. However, the late Mr. Montreuil still owed $65,534

and the CRA issued a notice of assessment to his four children in 1991 for this amount, followed by a second assessment in 1993, increasing the claim to $70,000. Mr. Montreuil's children, who were Canadian residents, had each received $70,000 from their father's estate under the terms of his will; the CRA claimed $70,000 in total. The four children each disputed their liability to pay the $70,000 and their appeal went to the Tax Court of Canada. The Court dismissed the appeal, holding that the assessments on the children were valid. Accordingly, the CRA was able to collect the entire amount claimed.

The 2004 Budget added a ten-year limitation period for collection of a tax debt, which will first take effect in March 2014. However, if a taxpayer was a Canadian resident at the beginning of the limitation period, the limitation period is extended indefinitely while he or she is a non-resident. (The limitation period also restarts if the CRA take any collection action or attempts, or if the taxpayer acknowledges the debt or if the CRA starts collection proceedings.) Although there has been no case law yet on the application of this rule together with section 160, it is likely that the CRA will take the position that it can enforce collection from Canadian residents more or less indefinitely if they receive funds from a long-departed emigrant.

In summary, if you leave Canada permanently while owing money to the CRA, you – or your heirs – might still end up having to pay the debt.

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