TAXADVISOR

Reporting Gains

CRA keeps track of stock sales

COURT REPORT

BY JAMIE GOLOMBEK

Most clients generally understand that they must report all their investment income annually on their tax returns. But clients are also responsible for tracking and reporting their capital gains on the disposition of their investments, despite the fact that very often they don't receive a formal T5008 Slip ("Statement of Securities Transactions") since the Canada Revenue Agency permits the dealer to substitute a client statement of account in lieu of the paper T5008 filing. Yet, the CRA gets an electronic copy of all securities transactions and has the ability to track and pursue unreported transactions, especially when large amounts of capital gains tax are at stake.

While clients may think that the risk of non-reporting capital gains is limited to the tax owing and perhaps some arrears interest, CRA may decide to also assess a gross negligence penalty. Under the *Income Tax Act*, a gross negligence penalty can be imposed on a taxpayer who has either "knowingly" or "under circumstances amounting to gross negligence" made a false statement or omission in a return.

> She did not believe the profit on the sale of shares was taxable.

A tax case decided earlier this year (*Boyer v The Queen, 2008 TCC 88*) shows just how harsh such a penalty can be.

In her 2000 income tax return, Diane Séguin Boyer reported about $35,000 of total income, consisting of $15,000 in employment income, $10,000 in taxable dividends and another $10,000 in taxable capital gains.

In December 2004, after the normal three-year assessment period, the CRA reassessed her, adding $168,283 in taxable capital gains to her income and imposing a gross negligence penalty of $20,862.

Within the *Act* is contained a special rule that says that if a taxpayer has made "any misrepresentation that is attributable to neglect, carelessness or willful default, or has committed any fraud in filing," the CRA has unlimited time to go back and reassess that person for tax owing.

While Boyer did not object to the tax owing on the unreported capital gain, she argued that the Notice of Reassessment was too late. She also objected to the gross negligence penalty.

Boyer is an accounting secretary and her husband is a chartered accountant. Their tax returns were prepared by someone who works with Mr. Boyer.

In 1998, Boyer sold her family residence, opened up a direct trading account and used the account to purchase shares of BCE Emergis Inc., which she disposed of in 2000, thereby realizing the capital gains she failed to report.

According to Boyer's testimony, she did not believe the profit on the sale of shares was taxable as long as the profit was reinvested in her portfolio. This is why she did not tell her accountant about these transactions when her 2000 tax return was being prepared. She also did not discuss this with her chartered accountant husband.

The judge found it odd that she didn't know she had to report such gains since her return also reported $10,000 of taxable capital gains (close to one-third of her 2000 total reported income) from the sale of various other securities in a different account.

Yet, Boyer claimed that "she did not know what a capital gain was, and that she never asked her accountant."

Needless to say, the judge concluded that CRA was indeed entitled to reassess beyond the normal reassessment period since the failure to report such a significant gain was attributable to Boyer's neglect.

The judge also upheld the gross negligence penalty, since Boyer "demonstrated wilful [sic] blindness when she did not tell her accountant about these stock trades. Had she done so, her accountant would have told her at once that the profit from these transactions had to be included in her income.… She should have known that these stock trades would have tax consequences, or at least asked whether they would." AER

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