

Report Everything

An omission when calculating an adjusted cost base could spark the ire of the CRA

COURT REPORT

BY JAMIE GOLOMBEK



At the end of the month, your clients will begin receiving their year-end statements. If they disposed of securities in 2005 they will also receive either a Canada Revenue Agency T5008 slip, known as a Statement of Securities Transactions or a customized statement from their dealer, broker or fund company detailing a list of all their dispositions in 2005.

The purpose of the T5008 information slip is to report the amount paid or credited to an investor for securities disposed of or redeemed during 2005.

Firms that issue T5008 slips generally report only the "proceeds of disposition" (box 21) and not the "cost or book value" (box 20) on the slips since the cost is often either not known or tracked by many brokerage firms. Therefore the onus is on the investor – perhaps with your assistance – to track their

own tax cost or adjusted cost base of the securities held, in order to accurately report the capital gain or loss on his or her tax return.

Remind clients that they need to report all non-registered securities dispositions in 2005 on Schedule 3 of their 2005 tax personal return, even if they don't get a formal CRA T5008 slip and instead just get a customized capital gains summary from their dealer or fund company. Failure to do so may cause the CRA to take a closer look at your client's return as the brokerage or fund companies all provide the CRA with an electronic copy of all securities dispositions in a given year.

Remind clients that they need to report all non-registered securities dispositions in 2005.

Perhaps your clients feel that the CRA must be too overwhelmed with the millions of T5008 slips it receives annually to

painstakingly match them up with dispositions reported on individual tax returns?

Well, a tax case decided in December (*Rajah v The Queen*, 2005 TCC 637), clearly shows that the CRA does indeed have the ability, where warranted, to use the information obtained from T5008 filings to audit, reassess and even charge penalties to non-compliant taxpayers.

During 1995, 1996 and 1997, Sahadevan E. Rajah bought and sold "a considerable number" of securities through various securities dealers. Rajah failed to disclose any of his securities dealings on his tax returns for those years, despite certifying in writing that the returns were "correct and complete."

The CRA was able to obtain information from the T5008 filings that initially reported total proceeds of disposition as \$66,766 in 1995, \$1,991,811 in 1996 and \$228,682 in 1997 (the 1996 amount was later reduced by \$432,665 to eliminate a duplication). The CRA then wrote to Rajah asking him to pro-

RATE INCREASES, DECREASES	
Employment insurance fall in 2006 ...	
EI Rate	\$1.87/\$100 of insurance earnings
Maximum contribution	\$729.00
Decrease from 2005	\$31.00
... but Canadian pension plan contributions go up	
CPP Rate	4.95%
Ceiling	\$42,100.00
Maximum contribution	\$1,910.70
Increase from 2005	\$49.50
Source: Department of Finance Canada	

vide supporting monthly brokerage statements, trading slips and his calculations of the ACB for each disposition.

Having received no response, the CRA advised Rajah that it was proposing to reassess him by including the full amount of proceeds in his income for each respective year, not having any evidence as to the appropriate ACB to be used. Note that Rajah was not eligible for the 50% inclusion rate for capital gains since he was a considered a frequent trader in securities, and thus any profit or loss was to be treated on income account and not on capital account – a finding that was not disputed by Rajah.

The CRA does indeed have the ability, where warranted, to use the information obtained from T5008 filings to audit, reassess and even charge penalties to non-compliant taxpayers.

The judge was somewhat critical of CRA's approach, saying that "it must have been obvious... that [Rajah] had not obtained the securities sold at no cost. Even a novice assessor must know that... the [Income Tax] Act provides [that] 'a taxpayer's income for a taxation year... is the taxpayer's profit... for the year.' Yet, Revenue made no effort to determine cost or allow for it except by way of demand to [Rajah] for documented proof. If this was an attempt to mete out an extra-legal penalty it can hardly be justified."

After Rajah was reassessed, he objected and retained an accountant that submitted to the CRA various brokerage slips establishing the ACB of some, but not all, of the securities that were disposed of in the years in question.

The CRA then further reassessed to reduce the income inclusion by the ACB of the securi-

ties that Rajah was able to provide.

While the judge rebuked the CRA's assessor for not making any enquires whatsoever regarding the ACB of the securities or any effort to recognize any cost other than the ACB established by Rajah through his own documents, he concluded that "in the end, it does not affect the validity of the assessments under appeal."

The judge concluded that the onus was on Rajah to establish "on the balance of probabilities that he incurred costs in excess of those allowed" by the CRA's reassessment. Since Rajah did not provide any additional ACB evidence, the CRA's reassessments were upheld.

The CRA also imposed gross negligence penalties. 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.

Given that Rajah's tax returns failed to disclose any income from the sale of securities, the Judge found that the "failure to refer to the transactions when made by a person with the [Rajah's] education and experience in the business world can only have been made in circumstances amounting to gross negligence."

Advisors can learn two obvious lessons can from this case. First of all, remind clients to report all taxable dispositions on their tax returns each year or risk being subject to gross negligence penalties on top of the tax and arrears interest that will be owing. Secondly, ensure clients maintain meticulous records of their ACB so that if they ever get asked by the CRA to justify the ACB reported on their returns, they have hard, documentary evidence to substantiate the reported amounts. **AER**

Jamie Golombek, CA, CPA, CFP, CLU, TEP, is the vice-president, taxation & estate planning at AIM Trimark Investments in Toronto. jamie.golombek@aimtrimark.com

BACKGROUNDER

Maximum Old Age Security benefit rates as of Jan. 1, 2006

Type of Old Age Security benefit	Maximum monthly benefit rates January – March 2006	Previous quarter October – December 2005
Basic Old Age Security pension	\$484.63	\$479.83
Guaranteed Income Supplement¹		
Single	\$593.97	\$570.27
Spouse/Common-law partner of		
a non-pensioner	\$593.97	\$570.27
a pensioner	\$389.67	\$371.46
an Allowance recipient	\$389.67	\$371.46
The allowance		
regular	\$874.30	\$851.29
survivor	\$967.24	\$939.84

¹ This includes the GIS increase for 2006.

Maximum Canada Pension Plan benefit rates as of Jan. 1, 2006

Type of Canada Pension Plan benefit	Maximum benefit rates for 2006
Retirement pension (at age 65)	\$844.58
Disability pension	\$1,031.05
Death benefit	\$2,500.00
Survivor's pension (under age 65)	\$471.85
Survivor's pension (age 65 and over)	\$506.75
Disability contributor's child benefits	\$200.47
Deceased contributor's child benefits	\$200.47
Combined pensions:	
Survivor/Retirement (retire at age 65)	\$844.58
Survivor/Disability	\$1,031.05
Flat rate:	
Survivor's pension	\$155.13
Disability pension	\$397.61

Source: Social Development Canada