



LAPOINTE ROSENSTEIN
MARCHAND MELANÇON
L.L.P. Attorneys

Newsletter

Tax, Estate Planning and Tax Litigation

October 2018

In the context of a tax audit, is a taxpayer required to submit to an interview?

M^{re} Jean-François Dorais, M. Tax
M^{re} Pierre Girard

During the course of a tax audit, the Canada Revenue Agency or Revenu Québec auditor will insist on arranging a meeting with you in order to inquire about your personal tax situation.

Given that taxpayers have a duty to collaborate with the tax authorities during an audit, as legal advisors, we require the questions be sent by the auditor in a written questionnaire.

However, it often happens that our clients seek our advice only after the *interview* by the tax authorities has been conducted. Under such circumstances, we require that the auditor send us a copy of the notes contained in our client's file or a copy of the questionnaire that he completed during the interview process.

In such circumstances, it is not uncommon for us to have to correct or rectify certain facts collected by the auditor, either because the answers given by our clients are incomplete, or because the auditor misinterpreted the answers given verbally by our clients.

Is a taxpayer required to submit to an interview?

Case law provides that a taxpayer is obligated to respond to a written questionnaire provided by the tax authorities. However, are taxpayers obligated to submit themselves to an interview conducted by the auditor?

In the *Cameco* decision, a request was submitted to the Federal Court by the Minister of National Revenue in order to obtain a binding order seeking to force 25 employees of Cameco to submit to an interview.

The tax audit pertained to the 2010, 2011 and 2012 taxation years of the company.

In response to this request, Cameco offered to answer the Minister's questions in writing rather than orally.

It is of interest to note that the Minister had interviewed various Cameco employees in 2006, 2007 and 2008 during the course of a prior tax audit (re: the company's 2003 taxation year), which led to notices of reassessment being sent to Cameco regarding its 2003 taxation year. These interviews were neither recorded nor attended by Cameco's attorneys. In the context of the litigation relating to the company's 2003 taxation year, when the questions asked during these interviews were presented to the Tax Court of Canada, it comes to no surprise that the Minister and Cameco's employees gave differing accounts as to what was actually discussed during these interviews.

The decision of the Federal Court

The Federal Court first stated that although the Minister's tax audit powers are broad, such powers must be exercised within certain limits.

The Court rejected the Minister's request and came to the conclusion that since Cameco had fully collaborated with the audit, the law did not allow the Minister to compel the 25 employees of Cameco to submit to an interview.

Although many factors were taken into consideration by the Court, the ruling in this case has led us to believe that as long as a taxpayer collaborates with the tax authorities, he or she is under no obligation to meet with the auditor to answer any questions regarding his personal tax situation.

A motion was brought by the Minister before the Federal Court of Appeal to appeal the Cameco decision.

The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.

For more information, contact one of the team members:

Jean-Roch Boivin

Attorney
514 925-6331
jean-roch.boivin@lrmm.com

Jean-François Dorais, M. Tax

Attorney
514 925-6376
jean-francois.dorais@lrmm.com

Michel Durand, D. Fisc., TEP

Attorney
514 925-6361
michel.durand@lrmm.com

Pierre Girard

Attorney
514 925-6422
pierre.girard@lrmm.com

Pierre A. Lessard, M. Tax

Attorney
514 925-6322
pierre.lessard@lrmm.com

Catherine Tremblay, M. Tax

Notary
514 925-6369
catherine.tremblay@lrmm.com