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Difference in Tax Rules

Tax prescription different in provincial, federal legislation

By **Jonathan Éthier**

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(June 20, 2019, 3:00 PM EDT) -- Taxation in Quebec reflects a dual system comprised of federal and provincial tax legislation along with respective authorities responsible for their enforcement. When it comes to tax jurisprudence, it is not uncommon for Quebec courts to cite federal law decisions, such as those of the Tax Court of Canada or the Federal Court of Appeal, in order to apply their teachings to the interpretation of provincial fiscal legislation.

In practice, a tax litigator defending the interests of a client at the objection stage may wish to support his representations to a Revenu Québec agent by referring to technical interpretations from the Canada Revenue Agency (CRA). After all, although provincial and federal tax regimes may not be perfectly analogous, they are far from being diametrically opposed.

Despite this, it seems that the use of provincial law as an interpretative tool for federal law is not appropriate in all cases, such as in matters of tax prescription.

The recent judgment *6075240 Canada Inc. v. Canada (Minister of National Revenue - M.N.R.)* [2019] F.C.J. No. 534 clearly reflects the differences between provincial and federal taxation regarding tax prescription.

In that case, a corporation was seeking judicial review by the Federal Court with respect to the CRA's refusal to process its tax returns. The taxpayer had been assessed by the CRA for failing to file a tax return for the 2010 and 2012 taxation years (arbitrary assessments).

The corporation attempted thereafter to file tax returns for the years in dispute to thwart the result of the initial assessments. However, it was refused by the tax authorities because more than three years had elapsed since the issuance of the arbitrary assessments.

Ultimately, the court dismissed the application for judicial review since the years in question were prescribed and the taxpayer failed to prove that the decision was unreasonable.

The legislator created the concept of a "normal reassessment period." This is a time period in which the tax authorities have the power to establish a new assessment. As a general rule, the CRA is able to reassess within three years of the date it sent a first notice of assessment for a given taxation year.

In the case of this taxpayer, a reassessment would have been the logical consequence of

processing its amended income tax returns to "overturn" the arbitrary assessments.

The decision reaffirms that the delay of prescription runs from the issuance of an arbitrary assessment under the *Income Tax Act*.

Moreover, the court states that the *Taxation Act* (the Quebec Act) cannot be used to interpret its federal equivalent. Prescription rules are distinct in both regimes.

Under the Quebec Act, Revenu Québec will be able to process an income tax return amended more than three years after the issuance of arbitrary assessments, considering that it is up to the minister to do so within three years of the filing date of a declaration if such date is later than the date of an arbitrary assessment previously issued.

It would be delightful to see changes to the federal legislation to harmonize the prescription rules with the provincial ones for corporate taxpayers. The CRA should not benefit from an acquired right over an arbitrary or estimated assessment resulting solely from the failure to file a tax return while Revenu Québec can process a return filed after many years.

The harmonization of the two regimes, as is generally the case with GST and QST, could be an avenue to explore.

Until Parliament acts, corporations should be diligent in submitting T2 returns in a timely manner. Also, the single document comprising both federal and provincial tax returns suggested by Premier François Legault to Prime Minister Justin Trudeau, if it were to ever materialize, should be governed by clear and harmonized rules.

There should be no disparity in treatment with respect to the processing of tax returns.

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