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CTV/NEWS: Lynda Steele:

I watched with great interest the two reports on Tax Shelters in Canada aired on Monday, April 14 and Tuesday April 15, 2014. As an introduction, I am an ex Auditor and Appeals Officer and worked for Revenue Canada Taxation from 1976 to 1984 .At that time Revenue Canada was , in fact , part of the Ministry of National Revenue . That changed in 2003 when, first, the Canada Customs Revenue Agency and then the Canada Revenue Agency came into being. The CRA is no longer the Government per say, but is, since then, a crown Corporation responsible to the Deputy Minister of National Revenue. This is the first example of misleading, confusing and incomplete information provided to Canadian taxpayers and the Media; an obvious case of the lack of full disclosure on the part of the CRA. The CRA does not make Income Tax Law; that is done through Legislation in the House of Commons; the CRA has the Administrative Authority in regulating the Income Tax Act; they have a mandate to regulate, assess and reassess Income Tax returns and to collect the appropriate taxes due. Their assessments and reassessments are to be in accordance with Income Tax law, Regulations and Jurisprudence determined by the Tax Court, the Federal Courts and ultimately the Supreme Court of Canada. The CRA reassesses taxpayers according to their interpretation of those laws and taxpayers may have a different interpretation of those same laws through their Accountant, Consultant, Tax Preparer or Lawyer. In those cases, the CRA has a structure and process to follow and the taxpayers have a Taxpayer Bill of Rights, one of which is to file a Notice of Objection to any reassessment; then the file is handled by the Appeals Division of the CRA. The Appeals Officer task is, as was mine as an ex Appeals Officer, is to ensure that income Tax Law was adhered to. Once an objection is filed, income tax law – section165 of the Act- any disputed income taxes are not legally due and no collection action is to be taken by the CRA. Furthermore, the Appeals Officer is to either vacate, vary or confirm the reassessment and if the reassessment is confirmed, the taxpayer then has the right to Appeal that confirmation to the Tax Court of Canada, to the Federal Courts and ultimately some Income Tax Appeals are heard in the Supreme Court of Canada .The courts determine the proper interpretation of the law.

With now knowing the actual law and the process available to taxpayers, including their taxpayer Bill of Rights, it is obvious, in my view that the CRA Alerts regarding tax Shelters in Canada are misleading, confusing, incomplete and, no doubt, lacking in full disclosure. The statement from the CRA referred to and repeated in the media report that: “not one tax shelter which resulted in taxpayers claiming a resulting tax credit was found to be compliant “is, in my view, disingenuous at best. What they are really saying is that not one has been found to be compliant according to their interpretation of the Income Tax Act. I know , first hand , that the reassessments referred to in the article – COIP and Mission Life Financial – have had Notices of Objections filed by the taxpayers involved and the CRA Appeals Division continues to sit on those Objections with information to the taxpayers that their Objection will be held in abeyance until such time as a decision is made – that is the decision that will be made by the Courts .So the Appeals Division of the CRA have stated that a decision on the legality and compliancy of these programs has NOT BEEN made as yet . Their alerts, however, and the reports in the media state that not one is compliant- should not the facts regarding these issues be made available to all taxpayers through the media so that they may address their circumstances based on the facts, the law and jurisprudence?

In addition, in the report on Monday, the taxpayer indicated that the CRA ordered him to pay the outstanding taxes; we can see, as indicated above the Income Tax Act states that taxes in dispute are not legally due if an Objection has been filed. That same taxpayer was upset because the CRA provided a T5003 form to file with his tax return to claim the donation but then disallowed his claim. That is the case because the tax shelters in question are registered with the CRA

and are legal under section 237 of the Income Tax Act. The CRA has, however, reassessed according to their interpretation of that section of the Act and the final decision as the legality and compliancy of that claim will be made by the courts.

The CRA reassesses all tax shelters to disallow all the tax credits claimed; however, not all tax shelters are structured the same so they are again misleading the public and the media that not one has been found to be compliant; the two referred to in the report have not even been appealed to tax court as yet because the CRA Appeals Division is sitting on the Notices of Objection as indicated herein.

I do agree with the CRA that there have been a number of tax shelters that have been found to be non-compliant due to not meeting the criteria outlined in the law and those that did not meet the proper interpretation of the law determined by the courts – they should, in fact be reassessed and confirmed by the Appeals division so the courts have the opportunity to set precedence for any others that may follow the same structure. I also know that there are, in fact. Programs that are based on law, regulations and the precedents set by the federal courts with a structure different than those found to be non-complaint and it is unfair, misleading, confusing and disingenuous for the CRA to lead taxpayers to believe that they are all the same.

With regard to the statement aired that the CRA is now withholding the 2012 assessments for taxpayers who participated in tax shelters in 2012, it is important, critical and necessary for the media and the public to know that this practice has been found to be in contravention of Section152 (1) of the Income tax act as determined by the Federal Court in the case: Alice Ficek and The Attorney General of Canada dated May 14, 2013. In spite of this ruling the CRA and the Minister of National Revenue continue this same practice with regard to other tax shelters. This issue will be addressed further by the courts.

In Canada, we, including the CRA are governed by the Rule of Law. Attached is a letter published in the Kelowna Capital News which addresses the dire consequences to taxpayers resulting from this practice of the CRA and condoned by the Minister by their lack of action.

Canadians are law abiding citizens as a whole, we comply with our self-assessing system regarding the filing of income Tax returns, and we deserve no less than to have our tax returns assessed in accordance with the law. Our first right under our Taxpayers Bill of rights states: “You have the right to receive entitlements and to pay no more or no less than what is required by law.” Too many taxpayers are reassessed by the CRA and ultimately have that reassessment varied or vacated by the courts because it is found that the reassessment was not in accordance with the law. In too many cases the reassessments are arbitrary in nature and not factual. All taxpayers should have access to our taxpayer’s Bill of Rights and they should not have to endure financial hardship, worry and the results of the misleading information from the CRA and the Government subsequently reported by the media in order to exercise those inherent rights.
Respectively

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