When Is An Objection Not a Valid Objection?

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The recent decision of the Federal Court of Appeal in *870 Holdings Ltd. v. Her Majesty the Queen*, 2003 FCA 460, is an important reminder to all tax practitioners of the importance of satisfying the requirements of subsection 165(1) of the *Income Tax Act* (Canada) (the "Act") in order to constitute a valid objection under the Act.

A taxpayer who disagrees with an assessment or reassessment of tax by the Minister generally has ninety (90) days from the date of mailing of the Notice of Assessment or Reassessment within which to file an Objection under subsection 165(1) of the Act. A separate Objection must be filed for each disputed assessment or reassessment. Consequently, a taxpayer wishing to object to assessments or reassessments for multiple taxation years must file a separate objection for each year. The only requirement as to form for Objections is that they be in writing. There remains in existence Form T400A (a prescribed form), however, it does not have to be used by the taxpayer.

The requirements for filing a valid objection are minimal. However, subsection 165(1) of the Act requires that the objection set out in writing the reasons for the objection and all relevant facts. The taxpayer in *870 Holdings Ltd.* failed to satisfy the requirements of subsection 165(1) of the Act and was held not to have filed a valid objection.

The taxpayer in *870 Holdings Ltd.* was issued a reassessment by the Minister. During and after the issuance of the Notice of Reassessment the taxpayer and its advisors were in communication with the audit personnel of Canada Customs and Revenue Agency ("CCRA") with respect to the issues contained in the Notice of Reassessment (there were several taxation years under reassessment). The contact by the taxpayer and its advisors included correspondence to CCRA that was received within ninety (90) days of the date of mailing of the Notice of Reassessment. Subsequently, the Minister applied to the Tax Court of Canada for an order dismissing 870 Holdings Ltd.'s appeal on the grounds that the taxpayer had not filed a valid notice of objection. The Taxpayer contended that correspondence dated June 12, 1998 from the taxpayer to CCRA did constitute a valid objection. The Tax Court of Canada dismissed 870 Holdings Ltd.'s appeal on the basis that the June 12, 1998 correspondence did not meet the requirements of subsection 165(1) of the Act (2002 DTC 1913).

870 Holdings Ltd. appealed to the Federal Court of Appeal. The Federal Court of Appeal dismissed the appeal. The court held that the letter of June 12, 1998 did not meet the requirements of subsection 165(1) of the Act. The June 12, 1998 letter merely asked CCRA for more time to provide requested information. The letter did not set out the reasons for the objection and the relevant facts in support of the objection.

The decision in *870 Holdings Ltd.* makes it clear that perfunctory completed objections simply stating that the taxpayer objects that are filed to protect a taxpayer's appeal rights may not be considered a valid objection unless the objection sets out the reasons for the objection and all relevant facts in accordance with subsection 165(1) of the Act.

The objection is an important document in the tax dispute process. Typically, the objection will be filed with the Tax Court of Canada in any subsequent appeal under either the informal procedure or the general procedure of the Tax Court of Canada. Regardless of whether the dispute ends up in the Tax Court of Canada the objection is the starting point for the appeals process. Tax practitioners must be mindful that the Objection as filed constitutes a valid objection or risk the same result as *870 Holdings Ltd.*

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