



CESTNICK

TAX MATTERS

No end in sight in two-decade battle with CRA

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Last week, I introduced the story of the Sentinel Hill film investment that continues to affect more than 2,300 investors. The issue is that the Canada Revenue Agency has, for over 20 years now, been looking to deny tax benefits that investors thought were virtually assured based on advance tax rulings (ATRs) issued to Sentinel Hill by the CRA. Today, I want to finish the story.

The story

To recap, Sentinel Hill was a film investment that raised funds to promote film production in Canada. Sentinel Hill Ventures Corp. (SHVC) was the architect of the Sentinel Hill investments, and SHVC had obtained ATRs from the Canada Revenue Agency for investments offered in both 2000 (known as SH2000) and 2001 (SH2001). “CRA knew that these ATRs would be relied upon by investors,” said Ken Gordon, one of four original principals of SHVC.

Regardless of the ATRs, CRA attacked both the SH2000 and SH2001 investments, denying part of the deductions claimed by the investors. SH2000 investors eventually received 91

per cent of their expected tax benefits through an agreement with CRA.

Not so for SH2001 investors – despite SH2001 being virtually identical to SH2000. CRA had expressed no concerns about SH2001 in its conversations with SHVC. Yet, the CRA issued a Notice of Determination in March, 2005, to deny SH2001 investors about 40 per cent of the tax benefits claimed.

SHVC filed Notices of Objection and waited four years for CRA to assign an appeals officer, which never materialized. Then, SHVC filed a Notice of Appeal in 2009 to facilitate an appearance at the Tax Court of Canada to resolve the matter.

So much for CRA’s “all due dispatch” obligation. Under our tax law, there are certain things that CRA is supposed to act on within a reasonable time. CRA clearly failed to act with all due dispatch with regard to the SH2001 Notices of Objection.

Once the Notice of Appeal was filed in 2009, the door was opened to a conversation with CRA to resolve the matter. SHVC tried to settle the SH2001

dispute in the same manner as SH2000. But CRA refused, and in fact raised additional arguments to deny the SH2001 tax benefits (arguments which had been raised in the SH2000 dispute and which CRA previously conceded were unfounded).

“The CRA knew that these new arguments, despite being without merit, would delay a resolution,” Mr. Gordon said. “And there were numerous other things done by CRA that ultimately delayed this case from proceeding,” he added. After eight years of delaying, the CRA finally abandoned the arguments.

“Once CRA conceded that their arguments had no merit, we were able to move forward trying to settle the matter,” Mr. Gordon said. With the assistance of a judge at the Tax Court of Canada, who effectively acted as a mediator, SHVC and CRA reached a settlement in September, 2021. It turns out that more than 95 per cent of the tax benefits claimed by the investors back in 2001 were allowed. A Consent to Judgment, which provides details of the agreed settlement, was issued by the Tax Court of Canada on Feb. 11, 2022.

The ending

After a battle that has lasted 17 years – since 2005, and which ultimately resulted in mediation by a Tax Court of Canada judge and a settlement allowing more than 95 per cent of the tax benefits originally claimed by investors, the CRA has now decided to attack the investors from a different angle. The CRA is trying to reassess the amount of the capital gain on which investors paid tax in 2011.

“Notwithstanding investors have already reported and paid tax on a capital gain in 2011 related to SH2001 (which the CRA appears to have no record of), the CRA

has chosen to reassess investors on an amount, the quantum of which is inflated and unsupportable,” Mr. Gordon said. “It’s clear that the CRA had the intention of reassessing investors for the 2011 year, yet they deliberately chose not to include the issue in the settlement terms agreed to by the parties.” And so the CRA has apparently desired for this battle to continue – without regard for the lives of the investors.

Perhaps CRA is expecting, as is often the case, that these individuals will become tired of the fight, tired of paying legal fees, and simply give in – even if they’ve done things correctly.

The moral

The Sentinel Hill investors are not the only ones who have dealt with this type of behaviour from the CRA. I’ve lost count of the number of e-mails I’ve received with other stories. Words that have been used to describe the culture at CRA include: predatory, egregious, bullying, harassment, unfair, unreasonable and more.

The Sentinel Hill investors are a significant example of the extent to which the system, and culture at CRA, is broken and needs an overhaul. “We are a shining example of how the CRA treats those who actually try to work within the system rather than circumvent it,” Mr. Gordon said. “This level of disingenuousness, abuse and wastefulness is endemic within the CRA,” he added.

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