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TAX-FILING TIPS

How to procrastinate until June 15th

Beat late filing penalties

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It's April, that means winter is finally over. But another, equally dreaded season is now upon us: tax season.

However, I've been keeping myself calm and taking time to smell the roses. How, you may ask, am I not panicking about getting my tax return ready when April 30 is just around the corner?

Well, as a partner at a law firm, I can take advantage of the June 15th filing deadline for my return. This means that I can procrastinate a little bit more before I start to tear my hair out.

If you are wondering how you can enjoy a little more zen time like me, then I suggest you read on to see if you also qualify for the extension to your April 30th filing deadline.

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If you are self-employed, or carry on a business on the side, you can give yourself a little more breathing room before filing your taxes (subject to certain restrictions relating to the type of business you are carrying on). Notwithstanding the general April 30th deadline, if you carried on a business in the taxation year, you are given until June 15th of the following year to file a return.

This extended deadline can also apply to your spouse (including a common-law spouse or partner).

If he or she is living separate and apart from you (as of and including December 31st, 2008) resulting from a breakdown of the marriage and for a period of at least 90 days, they do not get to enjoy the benefit of the extension and must file by April 30th. This may not, however, make you lose too much sleep.

However, if both you and your spouse carried on a business in the taxation year, you are each granted the June 15th deadline, whether you are living together ar not.

So why the extension?

It relates to the fact that all individuals carrying on a business are required to have a December 31st year-end (or to pay tax as though they did).

Of course there are a couple of catches to be aware of.

Even though you can file up to June 15th, the Canada Revenue Agency (CanRev)is not so kind as to let you not pay until then. April 30th will still be your "balance due date", i.e. you have to actually cough up the money for any taxes owing on April 30th, otherwise you will be charged with interest on unpaid taxes – the current rate is five per cent, compounded daily.

Late filers beware.

Although this deadline may be very helpful if you miss the April 30th filing deadline and you owe taxes, if you don't file your return on time (either by April 30th or June 15th), you will be subject to a penalty.

The penalty is five per cent of the tax unpaid when the return should have been filed, plus one per cent of the tax outstanding at the time of the filing deadline. This is multipied by the number of complete months (not exceeding twelve) between the filing deadline and when you actually filed the return.

Therefore, the maximum penalty is 17 per cent of the tax unpaid. This penalty can be applied even when you file the return only two days late.

The penalty is added to your assessment, and if you want to object, you have to actually file a Notice of Objection to the assessment. Note: If you have a habit of filing late, and were previously charged this penalty for your 2005, 2006 or 2007 return, the penalties are doubled for 2008 (10 per cent of the tax owing plus two per cent for each month outstanding).

Of course, if you are late filing due to circumstances beyond your control (i.e. you are hospitalized due to a serious illness) you can apply for leniency by making an application under the taxpayer relief provisions to have the penalties and interest reduced.

The request should be made in writing and addressed to your Tax Services Office.

If however, you find yourself unable to file by April 30, it may be particularly important to determine whether you qualify for the June 15th extension.

Eligibility.

The extension applies if you are a "consultant" – i.e., rather than being an employee for tax purposes, you are classified as an "independent contractor" (or if you carry on a business on the side in addition to being an employee). It also applies if you carry on a business through a partnership – even if you are a limited partner.

Since many investments are structured as limited partnerships, this seems to open up the possibility that investors in these vehicles might be able to file on June 15th.

In fact, the rules seem to say that if you met the prerequisites at any time during the year, you're eligible for the extension.

But one restriction for eligibility applies if the business you carry on is a tax sheltered investment.

More specifically, if the expenditures made in the course of you carrying on that business are primarily the cost or capital cost of tax sheltered investments, or the tax sheltered investments themselves. Then you won't qualify for the extended deadline.

For this purpose, tax sheltered investments are certain limited partnership interests (basically where expected write-offs within four years of acquisition equal or exceed the cost of your investment, net of prescribed benefits) or are registered tax shelters as defined in the Income Tax Act (Canada).

A word of caution: there is a lot of close reading of tax fine print required. So it may be prudent not to claim the extension unless you're in a jam.

However, if you have been assessed with late filing penalties, these arguments may come in handy.

And if your spouse, common-law spouse or partner takes advantage of filing by the June 15th deadline, be aware that this extension is not a family-wide benefit. If you have any children who file returns, those returns must still be filed by April 30th.

The extension for your spouse (if you are carrying on a business) is granted mainly to facilitate compliance with the child tax benefit provisions which requires filings by both spouses. Accordingly, the issue of whether you and your spouse are living together is determined under the child tax benefit rules.

Happily, the extension applies regardless of whether your spouse actually receives the child tax benefit; for example, it applies even if you and your spouse have no children.

If you are not carrying on a business and cannot take advantage of the extended June 15th deadline, you're going to have to bite the bullet and file by April 30th.

This can sometimes result in a rushed filing, and occasionally, a mistake on your return may be made. An error or omission can also result in either an increase or decrease to the tax payable.

However, the CRA prefers that you do not file an amended income tax return in these circumstances. Instead, you should write to the Tax Centre where you file your return, with an explanation and any additional materials such as T4 slips, T5 slips and receipts.

The CRA will most likely prefer that you also include Form T1-ADJ to organize the presentation of your adjustment request in a convenient fashion. ❑