

Focus TAX LAW

CRA targeting online income



David Rotfleisch

Income from all business sources is taxable in Canada. There is no difference in the tax treatment of rental income from Airbnb or sales by a corner store. The Canada Revenue Agency is well aware, and concerned, that not all Internet income is properly declared.

It was reported earlier this year that the CRA had conducted a tax audit of Uber in Canada and had asked for access to Uber's books and records. The records were released after some delay and the CRA dropped its Federal Court case once it had what it wanted.

The target of the tax audit is likely the individual drivers rather than the corporation. The CRA conducting an audit of a company that provides individuals with Internet-sourced income is not a new development in the agency's campaign to target the underground economy.

It did the same thing with eBay a few years ago, going to court to force eBay Canada to release the name of power sellers and then audited those eBay power sellers.

The 2014-2015 CRA Annual Report to Parliament quotes from "The Underground Economy in Canada, 2012" report by Statistics Canada, that the revised and updated estimates show the total underground activity in 2012 was equivalent to 2.3 per cent of the gross domestic product. CRA emphasizes how it is devoting more of its resources to combating unreported sales. Ontario recently issued a press release about the shared economy and a new pilot project with Airbnb which will send e-mail notifications to its hosts during income tax preparation season to remind them of their tax filing obligations.

Expenses directly related to operating the business, the Uber vehicle or the rental unit, such as insurance, gas or utilities and repairs and maintenance are fully deductible. In the case of an asset such as a vehicle or apartment being used part of the time for business and part of the time personally there would be an allocation of the expenses between business and personal use. There is no *de minimis* amount, so even \$100 or less in Internet-sourced income has to be reported. Furthermore, if a business earns more than \$30,000 in gross sales, including from multiple different business sources, it is



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required to register for GST/HST and to collect and remit the GST/HST charged.

Failure to report all Internet-sourced income or required GST/HST is tax evasion and the penalties on conviction include a fine starting at 50 per cent of taxes evaded as well as possible jail time. Civil penalties are also charged separate from the tax evasion penalties.

Internet-sourced income earned by an individual from a central operator that collects funds and remits to the individual is easy for the CRA to audit once it has access to the operator records, hence the audit of Uber and the previous court order for the records of eBay. Payments into a PayPal account are also easy for the CRA to verify.

The CRA has a policy of promoting voluntary compliance with the *Income Tax Act* through the voluntary disclosure program (VDP). A total of 19,134 voluntary disclosures were received in fiscal year 2014-2015, an increase of 21 per cent over the prior year. Total unreported income from all voluntary disclosures was more than \$1.3 billion.

The purpose of the program is to encourage taxpayers, such as

Airbnb renters or Canadian Uber drivers, to come forward to report any previously unreported GST/HST or unreported income or to file back tax returns.

However, the taxpayer has to initiate the disclosure before being approached by a tax auditor. Once the CRA has begun an audit or enforcement action, or in some cases has even asked for information, it's too late. The voluntary disclosure will be rejected and penalties will be levied and tax evasion prosecution is possible. If the VDP application is accepted there will be no civil penalties, including gross negligence and late filing penalties and the taxpayer is safe from the risk of prosecution. Amended income tax or HST/GST returns will be filed.

A retroactive application for an HST/GST number can also be submitted if the \$30,000 billing threshold is met in any year. The taxes that would otherwise have been owed will have to be paid, along with interest, although sometimes at a reduced rate. Furthermore, the name of anyone making a successful voluntary disclosure for unreported Internet income will be held in confidence, unlike with all other tax evasion prosecutions where the CRA issues press releases.

Finally, it is important to realize that the voluntary disclosure program applies even to someone who has committed deliberate tax evasion, including failure to declare income, such as Canadian taxpayers with Internet income who have not declared their income. Our office routinely successfully submits these types of VDP applications.

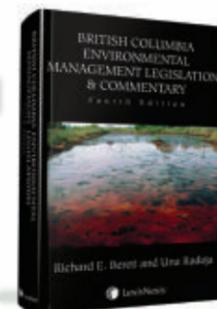
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