

## **TFSA Notices And Penalty Risks**

Jul 12 2021

The latest Federal Budget included an administrative rule change<sup>1</sup> that allows CRA to automatically send you notices electronically without your prior permission or registration. The risk, as noted in the recent case of a B.C. taxpayer, is this may lead to penalties for TFSA over contributions. It is your responsibility now to regularly check your CRA My Account site.

Let me explain. This change to the income tax law<sup>2</sup> will allow the CRA to send some Notice of Assessment (NOA) forms electronically. The change will apply to individuals who file their income tax return electronically and to those who use the services of a professional tax preparer that electronically files their return. Taxpayers who paper-file their tax returns will continue to receive a paper NOA. This new measure is intended to "improve the CRA's ability to operate digitally, resulting in faster, more convenient and accurate service, while also enhancing security", as originally reported in the National Post by Jamie Golombek, Managing Director, Tax & Estate Planning, CIBC Private Wealth Management.

You will also receive important CRA notices via email alone, without a subsequent snail mail notification. This can be a problem for you if you are not in the habit of regularly checking your email messages or ignoring those from CRA. You could even ignore the email from CRA thinking it is like those irritating fake CRA phone calls and messages. The challenge for you as a taxpayer is it could lead to tax penalties, as a British Columbia taxpayer found out in the latest TFSA overcontribution case, decided in May.

As Golombek wrote: "It's important for investors to carefully track their own TFSA contribution room, lest you overcontribute and face a penalty tax equal to one per cent per month for each month you're over the limit. If you accidentally overcontribute, you can request that the CRA waive or cancel the tax, which it has the power to do if it can be established that the tax arose "as a consequence of a reasonable error" and the overcontribution is withdrawn from the TFSA "without delay." The CRA has interpreted "reasonable error" as something beyond the taxpayer's control and "without delay" as within 30 days of being aware of the overcontribution."

The taxpayer went to Federal Court where the judge ruled, the taxpayer "as a matter of choice" did not have home internet service nor a cell phone, "as is his right." He did, however, use a computer at the local library to check his personal emails. CRA email notifications went to an email account in his name which he never checked. Nor did he access his CRA My Account site.

The taxpayer had routinely overcontributed to his TFSA and was in a penalty zone situation. The judge found that the taxpayer did, indeed, make an error in his TFSA contribution limit, which was neither "induced (nor) contributed to by CRA." The taxpayer acknowledged that the error was his, and that the CRA did not cause nor contribute to his error.

The judge concluded that since the taxpayer "failed to establish reasonable error, the relief is not available even if he withdrew the excess contribution within 30 days of receiving CRA's notice." The judge therefore dismissed the taxpayer's request for relief, effectively upholding the CRA's decision not to waive the TFSA penalty tax and interest, noted Golombek.

The lessons here are to know and stay within your TFSA limit and always check your email.

**[Call our office today](#)** [1] to discuss your TFSA investment options and strategies!

<sup>1</sup> [CRA Notice of Assessments - Rules Changes](#) [2]

<sup>2</sup> [Budget Royal Assent - June 29, 2021](#) [3]

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