



Canadian tax alert

BP Canada – taxpayer not required to provide tax accrual working papers

April 7, 2017

The Federal Court of Appeal released its decision in *BP Canada Energy Company* on March 30, 2017. The case dealt with whether the Canada Revenue Agency is entitled to obtain portions of a taxpayer's tax accrual working papers (TAWPs), specifically BP's list of uncertain tax positions, under subsection 231.1(1) of the Income Tax Act. In a unanimous decision, the Court found in favour of the taxpayer and denied the CRA access to the TAWPs. While this decision appears to limit the powers of the CRA, it should be noted that it would not be applicable to all of a taxpayer's TAWPs in all situations.

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The Court noted that “subsection 231.1(1) could not have been drafted in broader terms. Based on the plain language of subsection 231.1(1), a document which ‘relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable under [the] Act’ is accessible under that provision”. However, the Court stated that “subsection 231.1(1), properly interpreted, does not make papers such as these compellable ‘without restriction’. When one examines the context and purpose of subsection 231.1(1), it is clear that Parliament intended that the broad power set out in subsection 231.1(1) be used with restraint when dealing with TAWPs”.

In support of its decision, the Court discussed the inherent tension between meeting the CRA’s need to obtain information and the self-assessment system, noting that “this obligation to ‘self-assess’ does not require taxpayers to tax themselves on amounts which they believe not to be taxable...although auditors are entitled to be provided with ‘all reasonable assistance’ in performing their audits...they cannot compel taxpayers to reveal their ‘soft spots’”.

In addition the Court discussed the tension between the need for the CRA to obtain information under subsection 231.1 of the Act and the requirement for public companies to comply with provincial securities laws with respect to financial reporting, finding that “in granting the Minister broad access to documents pursuant to subsection 231.1(1) of the Act, Parliament cannot have intended that this power be used to imperil the integrity of the financial reporting system put in place by the provinces”.

Ultimately, the Court held that the CRA’s publicly-disclosed policy that it would not normally seek access to TAWPs is the appropriate policy, indicating that in the Court’s view, “the policy reflects the very constraint which the Act imposes on the Minister”.

The Minister of National Revenue has 60 days to seek leave to appeal the decision to the Supreme Court of Canada. It will be interesting to see whether the Minister chooses to do so and if so, whether the Supreme Court will grant leave.

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