



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.

Contacts:

Clifford Rand

Partner, Deloitte Tax Law
Tel: 416-775-8830

Fatima Laher

Tax Clients & Industry Leader
Tel: 415-601-6570

Albert Baker

National Tax Policy Leader
Tel: 416-643-8753

Eastern Region

Mark Noonan

Tel: 613-751-6688

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.

Deloitte LLP

Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 200
Toronto ON M5H 0A9
Canada

This publication is produced by Deloitte LLP as an information service to clients and friends of the firm, and is not intended to substitute for competent professional advice. No action should be initiated without consulting your professional advisors. Your use of this document is at your own risk.

Deloitte, one of Canada’s leading professional services firms, provides audit, tax, consulting, and financial advisory services. Deloitte LLP, an Ontario limited liability partnership, is the Canadian member firm of Deloitte Touche Tohmatsu Limited.

Quebec

Philippe Bélair
Tel: 514-393-7045

Toronto

Peter Corcoran
Tel: 416-601-6656

Prairies

Markus Navikenas
Tel: 403-267-1859

British Columbia

Colin Erb
Tel: 604-640-3348

Related links:

[Deloitte Tax Services](#)

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a U.K. private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

© Deloitte LLP and affiliated entities.

Deloitte Tax Law LLP

Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 200
Toronto, ON M5H 0A9

This newsletter provides general information and is not intended as legal advice.

A law firm affiliated with Deloitte.

Deloitte Tax Law LLP is an independent national law firm with offices across Canada. Our team of tax lawyers has extensive experience in all areas of tax controversy and dispute resolution, and includes several of the top tax litigators in the country. We assist our clients in managing the audit, assessment and appeals process, and represent both individual and corporate clients at all levels of court, covering all aspects of Canadian tax law, including domestic and international income tax, customs, GST/HST and provincial sales taxes.

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.