

# LITIGATION NOTE

July 7, 2020

## CRA Releases National Business Resumption Plan

On June 23, 2020, the Canada Revenue Agency (“CRA”) released its National Business Resumption Plan (“NBRP”). The NBRP signifies an end to the CRA’s critical services phase, which spanned from March 16, 2020 to June 26, 2020 and focused on essential services such as high-risk audits and the administration of the new government relief programs.

The CRA stresses that the NBRP is an evolving process and subject to change, and that the resumption of services will occur in phases. This said, the release of the NBRP is a first sign of a return to normal tax dispute activity including audits, collections and the review of notices of objection.

### A. Appeals Branch

During the critical services phase, the Appeals Branch focused on certain objections deemed to be of a high priority, including those related to benefits, scientific research & experimental development claims and GST/HST refunds. The NBRP contemplates the resumption of all remaining activity during the summer (July-August), including the Taxpayer Relief Program and CPP/EI Appeals to the Minister or the Courts.

Appeals officers have started to work remotely, but that transition has not been without challenges. Most are checking their voicemail regularly and making calls using their personal cellular phones, but those calls often arrive from blocked numbers which raise concerns about security and authenticity. Documents sent by mail or fax are being scanned for electronic review by the Appeals Branch, but that scanning only takes place on a periodic basis, leading to further delays in making taxpayer representations. It has been emphasized that submissions uploaded through the CRA My Account or Represent a Client service are preferred. Some have exchanged email correspondence with the CRA (a form of communication that was previously not permitted), but its use has been inconsistent. Overall, the migration to remote work on the part of the CRA has been a welcome development, but will require patience on the part of taxpayers and their representatives.

### B. Collections and Verification Branch

By the end of August 2020, Debt Management Call Centres will be reactivated, with payment arrangement criteria relaxed to provide debtors with greater flexibility. Insolvency officers will begin virtually attending creditor meetings and attending to high-risk files. Notable to recipients of the Canada Emergency Wage Subsidy (“CEWS”) is that the Trust Exam Program and Employer Compliance Audit will launch a pilot post-payment compliance project, in addition to responding to CPP/EI rulings.

Scheduled to commence in September 2020 or later are outbound calls to pursue payment arrangements and engage with debtors with respect to their financial situations. This said, no legal action will be taken at that time. Post-payment validation of government relief programs, including the CEWS, Canada Emergency Response Benefit (“CERB”) and Canada Emergency Student Benefit (“CESB”), also are anticipated to begin at that time. Automated collection strategies such as collection letters are planned to begin in October 2020.

January 2021 is the targeted date for collections officers to resume the conventional approach to collections, whereby legal warnings will be sent and legal action taken absent a payment arrangement. Some of this activity may be accelerated to September where collection risks exist.

### **C. Audits and the Compliance Programs Branch**

During the critical services phase, audit activity continued with respect to refunds and credits and matters considered to be high risk, such as the GST/HST Refund Integrity Program. By August 2020, the CRA plans to resume GST/HST Large Business audits, expand its audits of the GST/HST Refund Integrity program and resume High Net Worth Compliance Programs. Small and medium income tax and GST/HST program audits are anticipated to begin in September 2020. By October 2020, medium business audits, complex transactions, non-resident income tax audits and medium GST/HST audits are planned to resume.

No fixed date has been established for the resumption of small business income tax and GST/HST audits and GST/HST desk audits for businesses that meet certain gross revenue thresholds. This said, all tax audit activity is anticipated to resume by January 2021. Some of this audit activity may be accelerated to September where compliance risks exist.

### **D. Key Takeaways for Tax Disputes**

- Taxpayers with objection files assigned to an appeals officer likely will be contacted shortly to discuss next steps in moving forward. Appeals officers are able to check their voicemail and receive written correspondence.
- Legal action on collection files prior to January 2021 should be confined to high risk files. Recipients of the CEWS, CERB and CESB can expect post-payment CRA validation and audit activities to begin in September 2020.
- Most conventional audit activity is not planned to resume until January 2021 at the earliest.

We are here to help.

Our tax litigation and dispute resolution lawyers at Felesky Flynn are committed to monitoring these developments so our clients can focus on their businesses and their families at this turbulent time. If we can be of assistance on any of the above matters, please contact us.