



GST/HST Memoranda Series

Chapter 31

January 1999 (revised January 2007)

Objections and Appeals

Overview

This chapter explains the objections and appeals process for those persons who wish to object to a Notice of Assessment and/or appeal a decision regarding an objection under Part IX (Goods and Services Tax/Harmonized Sales Tax (GST/HST)) of the *Excise Tax Act* (the Act).

Disclaimer

The information in this chapter does not replace the law found in the *Excise Tax Act* and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate Regulation or contact any Canada Revenue Agency (CRA) tax services office for additional information. If you are located in the Province of Quebec, please contact the Ministère du Revenu du Québec (MRQ) for additional information on matters concerning objections and appeals related to the GST only.

Note

Parts of this memorandum were revised in January 2007. Significant changes have been side-barred for quick reference.

Note HST

Reference in this publication is made to supplies taxable at 6% or 14% (the rate of the HST). The 14% HST applies to supplies made in Nova Scotia, New Brunswick and Newfoundland (the “participating provinces”).

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Objection process

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| Formal objection process | 1. The Act provides for a formal objection process for persons who disagree with a Notice of Assessment issued under Part IX of the Act. |
| Preliminary enquiries | 2. Persons who disagree with a Notice of Assessment are encouraged to contact the nearest CRA tax services office to discuss any issues surrounding the assessment in an effort to resolve those issues, and thereby avoid having to initiate the formal objection process.

3. The formal objection process commences with the filing of a Notice of Objection to an assessment or a reassessment, which results in an impartial review by the Appeals Division, and can lead to appeals to the Tax Court of Canada, the Federal Court of Appeal and the Supreme Court of Canada. |
| Objections and appeals for other taxes | 4. For information on filing an objection and/or an appeal relating to taxes imposed under the Act other than the GST/HST, refer to Section 6.3, <i>Objections and Appeals for Other Taxes</i> , of Chapter 6, <i>Administration</i> , of the Excise Taxes and Special Levies Memoranda Series. |

Assessments

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| Assessments or reassessments within specified time frames 297 and 298, ss 296(1) | 5. The Canada Revenue Agency (CRA) has the authority to assess or reassess tax payable, net tax, rebates, penalty or interest, and other specified amounts. The legislation establishes time limitations on the CRA's right to assess or reassess. In general, assessments must be made within a four-year limitation period. However, an assessment can be made at any time notwithstanding the four-year limitation period where misrepresentation or fraud is involved, or where a waiver of the time limit is in effect. |
| Issuing Notice of Assessment ss 300(1) | 6. When an assessment is completed, the CRA issues a Notice of Assessment, stating the outstanding amount of tax owing by the person or owing to the person.

7. More information on assessments is available in GST Memorandum 500-3, <i>Assessments and Penalties</i> , dated October 4, 1991 (to be re-issued as Section 16.1, <i>Tax Audits</i> , of Chapter 16, <i>Assessments and Penalties</i>). |

Filing a Notice of Objection

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| Form GST159 ss 301(1.1) | 8. Persons, including those defined as specified persons under the Act, who disagree with a Notice of Assessment may file a Notice of Objection with the CRA within 90 days after the date the Notice of Assessment was sent, using form GST159, <i>Notice of Objection (GST/HST)</i> . A completed copy of the Notice of Objection must be filed with the Appeals Division of the nearest CRA tax services office. A sample of the form is provided in Appendix A to this section. |
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31 Objections and Appeals (continued)

Information to be contained in and submitted with the Notice of Objection ss 301(1.1)	9. The Notice of Objection must set out the reasons for the objection and provide all the relevant facts in detail. In addition, letters, invoices or any other documents supporting the objection should be submitted. It is also helpful if a copy of the disputed Notice of Assessment accompanies the Notice of Objection.
Specified persons ss 301(1)	10. The Act provides special rules for specified persons who object to an assessment. A specified person is a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) during the reporting period or a person (other than a charity) whose threshold amounts (as determined under subsection 249(1)) for the person's fiscal year that includes the reporting period and the immediately previous fiscal year each exceed \$6 million. A person's threshold amount for any fiscal year is calculated by reference to the total value of the consideration for taxable supplies (other than supplies of financial services, sales of capital property and zero-rated exports) made by that person (and any associates) in the immediately preceding fiscal year. Therefore, the determination of whether a person is a specified person in a given year is based on the annual taxable supplies made in the two immediately preceding fiscal years.
Issues to be decided ss 301(1.2)	<p>11. The special rules require that specified persons provide detailed information in a Notice of Objection. In particular, the Notice of Objection must:</p> <ul style="list-style-type: none">• provide a reasonable description of each issue requiring a decision;• specify the relief that is being sought in respect of each issue, expressed as the change in any amount relevant for purposes of the assessment (e.g., an increase in the amount of allowable input tax credits); and• list the facts and reasons relied on for each issue.
Late compliance ss 301(1.3)	12. Where a specified person has not provided the required information with respect to the amount of relief sought or the facts and reasons in support of each issue in the objection, the CRA may, in writing, request the person to provide it. If the person submits the information in writing to the CRA within 60 days after the request, it will be treated as having been provided in the Notice of Objection.
Objection to more than one assessment	13. If a person is objecting to more than one assessment, a separate Notice of Objection must be filed for each disputed assessment. If the facts and reasons for the objections are identical for more than one assessment, this may be indicated on each Notice of Objection and one statement of facts may be submitted.

Restrictions

Limitation on objection when waiver signed ss 301(1.6)	14. A person cannot file a Notice of Objection in respect of an issue for which the person has waived in writing the right to object to that issue.
Limitations on objections ss 301(1.4) and (1.5)	15. Specified persons are precluded from raising new issues or revising the relief sought in an objection to an assessment made by the Appeals Division under subsection 301(3). The restriction does not limit a person's right to object to a new issue raised for the first time in a reassessment issued by the Appeals Division.

Effective dates for restrictions

16. The restrictions for specified persons apply to any assessment the notice of which is issued on or after May 1, 1996, unless it is a reassessment the notice of which is issued by the Appeals Division under subsection 301(3) pursuant to a Notice of Objection in respect of an earlier assessment issued before May 1, 1996.

Processing a Notice of Objection

Receipt of Notice of Objection

17. Notices of Objection are date stamped as they arrive at the CRA tax services offices. However, notices sent by first class mail or its equivalent are deemed to have been received on the date they were mailed.

Follow-up letter from CRA

18. After receiving the Notice of Objection, the Appeals Division sends either a letter of acknowledgement or a letter informing the person that the objection is invalid (e.g., where the objection was not filed within 90 days).

Client contact and file review

19. The appeals officer reviews the objection and contacts the person or the person's representative to discuss the matter. When requested to do so, persons should provide additional documentation promptly to allow for the quick resolution of the objection.

20. To ensure that the reasons behind the assessments are understood and to provide an open exchange of information, documents pertaining to the issues in dispute are offered to the person at the outset of the objection stage. In addition, the person is informed of discussions held between the appeals officer and the assessing area about the disputed assessment.

Results of decision

21. After considering all the facts and reasons, a decision respecting the assessment is made by the Appeals Division with one of the following results:

- (a) **The assessment may be vacated.** This means that the entire assessment under objection is reversed. This may occur, for example, where the person submits additional information or conclusive arguments which the CRA did not have when the disputed assessment was made.
- (b) **A reassessment may be made.** This means that the objection is allowed in whole or in part, and the amount assessed is adjusted. This occurs where the Appeals Division decides that the person is correct on all points or on some points raised in the objection.
- (c) **The assessment may be confirmed.** This means that the assessment under objection is upheld. Confirmation occurs when a person cannot demonstrate that the original assessment was incorrect.

Issuing a Notice of Decision

22. The Appeals Division issues a Notice of Decision. If the objection is allowed in whole or in part, the Notice of Decision is accompanied by a Notice of Reassessment indicating the revised amount. The Appeals Division also arranges to make any required adjustments to the person's account.

Extension of time limit to object (or make a request)

Applying for extension
ss 303(1) and (2)

23. If a person has not filed a Notice of Objection within 90 days after the date the notice of the assessment is sent to the person (or if the person has not made a request under subsection 274(6) within the required time limit), the person may apply to the CRA for an extension of the time limit to object (or to make a request). The application for an extension of the time limit should set out the reasons why the Notice of Objection (or request) was not filed within the required time limit.

Filing documentation
ss 303(3)

24. When applying for an extension of the time limit to object (or to make a request), a copy of the application accompanied by a copy of the Notice of Objection (or request) should be sent by registered mail to the Chief of Appeals in the nearest CRA tax services office.

Duties of the CRA
ss 303(5)

25. Upon receipt of an application for an extension of the time limit to object (or make a request), the Chief of Appeals, (or his/her designate) will, with all due dispatch, consider the application and grant or refuse it (refer to paragraph 27 for the conditions that must be met), and will notify the person of the decision by registered or certified mail.

Extension of time limit
by Tax Court of Canada
s 304

26. If the Chief of Appeals refuses the application for an extension of the time limit for filing a Notice of Objection (or for making a request), the person may apply to the Tax Court of Canada for the extension to be granted within 30 days after the date the decision to refuse the application has been sent. A person may also apply for an extension of the time limit to the Tax Court of Canada after 90 days have passed since the application for an extension of the time limit was made, and the person has not been notified of the decision made by the Chief of Appeals. An application to the Tax Court of Canada must be made by filing with the Registry of the Tax Court of Canada, or by sending to the Registrar by registered mail, three copies of the documents originally filed with the Chief of Appeals when the extension was sought.

Conditions to be met
ss 303(7) and 304(5)

27. An extension of time will not be granted unless the following conditions have been met:

- the application is being made within one year after the expiration of the time limit for objecting (or for making a request under subsection 274(6));
- the person demonstrates that, within the time limit for objecting, the person was unable to act or to have someone else act in the person's name, or the person had a *bona fide* intention to object (or to make the request);
- the person demonstrates that, given the reasons set out in the application and the circumstances of the case, it is just and equitable to grant the application; and
- the person demonstrates that the application was made as soon as circumstances permitted it to be made.

Appeal process

28. The Act provides for a formal appeal process for persons who have objected to an assessment.

Tax Court of Canada

29. GST/HST issues can be appealed to the Tax Court of Canada, an independent court of law that regularly conducts hearings in major centres across Canada.

Time limit for appeals 306

30. A person who has filed a Notice of Objection may appeal to the Tax Court of Canada to have the assessment vacated or a reassessment made if:

- the person does not agree with the decision issued by the Appeals Division, in which case the appeal must be filed within 90 days from the date the Notice of Decision was sent; or
- the CRA has not issued a Notice of Decision regarding the objection within 180 days from the day the person filed the Notice of Objection.

Direct appeal

Waiving right to reconsideration of assessment ss 301(4)

31. A person may request consent from the CRA to appeal directly to the Tax Court of Canada and waive the right to a reconsideration of the assessment (i.e., the objection process). A request for a direct appeal to the Tax Court of Canada may be made in the Notice of Objection or in a separate document filed at the same time.

32. After considering the request, the CRA may consent to the direct appeal and confirm the assessment without reconsideration. The person then files a Notice of Appeal with the Registrar of the Tax Court of Canada. However, if the CRA does not consent, the objection is processed in the normal manner.

Procedures for hearing appeals

Two procedures for hearing appeals

33. The Tax Court of Canada hears appeals under two distinct procedures: the informal procedure and the general procedure.

- Informal procedure

34. The informal procedure is followed to resolve appeals as quickly and informally as possible since the Court does not have to adhere strictly to all technical rules of evidence. However, decisions issued under this procedure may not be treated as precedents for other cases.

35. The election for the matter to be heard under the informal procedure may be made regardless of the amount in dispute, although it is generally used for smaller amounts. Appellants may represent themselves or be represented by a lawyer or agent. The Notice of Appeal must be in writing, indicate the relevant facts and the reasons for appealing, and must clearly indicate the choice of the informal procedure. The Notice of Appeal may be filed by depositing it, or mailing it, to the Registry of the Court, or by any other means (including electronic means) that may be provided for in the rules of the Court. The Notice will be deemed to be filed the day it is received by the Registry of the Court.

Costs

36. The Court may order the CRA to compensate appellants for costs if they are more than 50% successful in their appeal, the amount in dispute is equal to or less than \$7,000, and the total value of all their supplies for the prior fiscal year was \$1,000,000 or less.

- General procedure

37. Unless the appellant specifically elects for the matter to be heard under the informal procedure, the appeal will be processed under the general procedure, regardless of the amount contested. Individuals may represent themselves or be represented by a lawyer. The rules of the Tax Court of Canada require a corporation to be represented by a lawyer unless the Court, in special circumstances, allows the corporation to be represented by one of its officers. The formal rules of the Tax Court are followed during the appeal. Filing fees apply as follows:

<u>Filing fee</u>	<u>Amounts in dispute</u>
\$250	less than \$50,000
\$400	\$50,000 or more, but less than \$150,000
\$550	\$150,000 or more

Costs

38. The Court may order the unsuccessful party to compensate the other party for legal costs.

Obtaining additional information

39. A person may obtain additional information about the appeal process and the documentation required by contacting an office of the Registrar of the Tax Court of Canada. A list of the registry offices is provided in Appendix B to this section.

Restrictions on appeals

Limitation on appeals when waiver is signed ss 306.1(2)

40. A person who has waived in writing the right to object or appeal in respect of an issue cannot appeal that issue to the Tax Court of Canada at a later time.

Limitations on appeals to Tax Court of Canada ss 306.1(1)

41. Specified persons as described in paragraph 10 are precluded from appealing an assessment to the Tax Court of Canada if they have not complied with the information requirements described in paragraph 11. Specified persons are also precluded from revising the relief sought with respect to an issue that was specified in the Notice of Objection. However, specified persons may appeal to the Tax Court of Canada in respect of an issue that was raised for the first time by CRA in a reassessment issued by the Appeals Division under subsection 301(3).

31 Objections and Appeals (continued)

Effective dates for restrictions	42. The restrictions described in paragraph 41 apply to any appeal instituted after March 20, 1997, in respect of a Notice of Assessment issued after April 1996 (other than a Notice of Reassessment issued under subsection 301(3) by the Appeals Division after April 30, 1996, pursuant to an objection to an earlier assessment issued before May 1, 1996).
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Extension of time limit to appeal

Applying for extension ss 305(1) and (2)	43. A person who has not appealed within the 90-day time limit may apply to the Tax Court of Canada for an extension of the time to appeal. The application must give the reasons why the appeal was not made within the required time limit.
Filing documentation ss 305(3)	44. When applying for an extension of the time limit to appeal, three copies of the application accompanied by three copies of the Notice of Appeal must be filed with the Registry of the Tax Court of Canada or sent to the Registrar by registered mail.
Conditions to be met ss 305(5)	<p>45. An extension of time will not be granted unless the following conditions have been met:</p> <ul style="list-style-type: none">• the application is being made within one year after the expiration of the time limit for appealing;• the person demonstrates that, within the time limit for appealing, the person was unable to act or to have someone else act in the person's name, or the person had a <i>bona fide</i> intention to appeal;• the person demonstrates that, given the reasons set out in the application and the circumstances of the case, it is just and equitable to grant the application for an extension of time;• the person demonstrates that the application was made as soon as circumstances permitted it to be made; and• the person demonstrates that there are reasonable grounds for the appeal.

References to Tax Court of Canada

References to Tax Court ss 310(1)	46. The CRA and another person may agree, in writing, to have any question arising in respect of any assessment or proposed assessment determined by the Tax Court of Canada. Such determinations are made under the general procedure.
Time during consideration not counted ss 310(2)	47. The time during which a question is being determined by the Tax Court of Canada is excluded from the limitation periods for issuing assessments and the filing of Notices of Objection and Appeal.

31 Objections and Appeals (continued)

References to common questions
ss 311(1) and (2)

48. The CRA may apply to have a question arising out of transactions or occurrences or a series of transactions or occurrences common to assessments or proposed assessments of two or more persons determined by the Tax Court of Canada. The application must set out the question for which the determination is requested, the names of the persons that the CRA seeks to have bound by the determination of the question, and the facts and reasons on which the CRA relies and on which the CRA intends to base assessments of each named person. The CRA must serve a copy of the application on each of the named persons as well as any other persons that the Court considers will likely be affected by the determination of the question.

Where Tax Court may determine question
ss 311(3)

49. If the Court grants the application, it will then determine the question. If one or more of the persons in question has already appealed, the Court may also make an order joining all of the named parties to the appeals already filed.

Determination final and conclusive
ss 311(4)

50. The determination of the Court is final and conclusive, and is binding upon all parties named in the order. A determination may be the subject of an appeal or an application for judicial review in the same manner as an ordinary appeal under the General Procedure or Informal Procedure of the Tax Court.

51. The general procedure will apply to such references unless all parties agree to the informal procedure.

Time during consideration not counted
ss 311(7)

52. The time between the day an application is served on a person as described in paragraph 48 and the day the determination becomes final in the case of a named person (or the day the person is notified of not being named in an order of the court, in any other case) is excluded from the limitation periods for the issuing of assessments and the filing of Notices of Objection and Appeal.

Federal Court of Appeal

53. Judgments of the Tax Court of Canada under the informal procedure can be reviewed by the Federal Court of Appeal. A person must apply for a judicial review to the Federal Court of Appeal within 30 days of the date of the Tax Court's judgment is communicated.

54. Judgments of the Tax Court of Canada under the general procedure may be appealed to the Federal Court of Appeal within 30 days of the date of the Tax Court's judgment. The months of July and August are not included in the 30-day calculation.

Supreme Court of Canada

55. Judgments of the Federal Court of Appeal may be appealed to the Supreme Court of Canada by requesting leave to appeal. The Supreme Court may grant leave to appeal if it feels that it should hear the case because of its national significance or the importance of the legal issues. Applications for leave to appeal must be filed within 60 days after the date of judgment of the Federal Court of Appeal.

Amounts in dispute

Amounts assessed are payable
s 315

56. The CRA may not generally take any collection action in respect of an amount payable or remittable unless it has been assessed. Any amount remaining unpaid on a Notice of Assessment that is mailed to a person is payable immediately to the Receiver General. The CRA may endeavour to collect the total amount outstanding even though a person files an objection or appeal. However, subject to the terms and conditions stipulated by the CRA, the CRA may postpone collection action against a person in respect of all or any part of any amount assessed that is the subject of a dispute between the CRA and the person. Amounts collected will be refunded with interest if the dispute is resolved in the person's favour.

Security posted
ss 314(2)

57. If a person objects to or appeals an assessment, the CRA is required to accept security in an amount and form satisfactory to the CRA for payment of any amount in controversy. No collection action will be taken on any amount in dispute that is under objection or appeal where the person provides satisfactory security to the CRA for the payment of the amount. Security will be surrendered if the dispute is resolved in the person's favour.

All GST/HST memoranda and other CRA publications are available on the CRA Web site at www.cra-arc.gc.ca

Appendix A - Form GST159, *Notice of Objection (GST/HST)*

Appendix B

Tax Court of Canada Registry Offices

Principal Office – Ottawa

200 Kent Street
Ottawa, ON K1A 0M1
Telephone: (613) 992-0901
or 1-800-927-5499
TDD: (613) 943-0946
Fax: (613) 957-9034

Toronto

180 Queen Street West
Suite 200
Toronto, ON M5V 3L6
Telephone: (416) 973-9181
TDD: (416) 954-4245
Fax: (416) 973-5944

Winnipeg

Imperial Broadway Tower
363 Broadway Street, 4th Floor
Winnipeg, MB R3C 3N9
Telephone: (204) 983-1785
TDD: (204) 984-4440
Fax: (204) 983-7636

Edmonton

Scotia Place
10060 Jasper Avenue
Tower 1, Suite 530
P.O. Box 51
Edmonton, AB T5J 3R8
Telephone: (780) 495-2513
TDD: (780) 495-2428
Fax: (780) 495-4681

Calgary

Canadian Occidental Tower
635 Eighth Avenue S.W.
3rd Floor, P.O. Box 14
Calgary, AB T2P 3M3
Telephone: (403) 292-5556
TDD: (403) 292-5879
Fax: (403) 292-5329

Vancouver

Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B6
Telephone: (604) 666-7987
Fax: (604) 666-7967

Montréal

30 McGill Street
Montréal, QC H2Y 3Z7
Telephone : (514) 283-9912
Fax : (514) 496-1996

Québec

Palais de Justice
300 Jean Lesage Blvd
Room 500A
Québec, QC G1K 8K6
Telephone: (418) 648-7324
TDD: (418) 648-4644
Fax: (418) 648-4051

Fredericton

Westmorland Place
82 Westmorland Street
Suite 100
Fredericton, NB E3B 3L3
Telephone: (506) 452-2424
TDD: (506) 452-3036
Fax: (506) 452-3584

Halifax

Central Trust Tower
1801 Hollis Street
17th Floor, Suite 1720
Halifax, NS B3J 3N4
Telephone: (902) 426-5372
TDD: (902) 426-9776
Fax: (902) 426-5514

Iqaluit

Nunavut Court of Justice
Arnakallak Building (#224)
P.O. Box 297
Iqaluit, NU X0A 0H0
Telephone (867) 975-6100
Fax: (867) 979-6168

Tax Court of Canada Web site: www.tcc-cci.gc.ca

