

Proposal – Registration of Tax Preparers Program

Consultation Paper

January 17, 2014



Canada Revenue
Agency

Agence du revenu
du Canada

Canada

Message from the Minister

As Minister of National Revenue, I am pleased to note the new and innovative approaches to compliance that the Canada Revenue Agency (CRA) is developing to improve our effectiveness, including significant measures that make it easier for taxpayers who want to voluntarily comply with the tax laws of Canada and make it more difficult for those who choose not to. These approaches include expanding the use of electronic interactions, implementing new measures to address international tax evasion and aggressive tax avoidance, increasing audit focus on high risk files, and placing greater attention on “up front activities,” that is, before tax returns are filed.

The proposed Registration of Tax Preparers Program (RTPP) is an important component of the CRA’s new and innovative approaches to its compliance programs.

The CRA recognizes that tax preparers play a crucial role in Canada’s self-assessment system. In fact, the majority of tax returns are prepared by tax preparers. As such, they are influential in promoting good compliance. Our objective is to improve the completeness and accuracy of the tax returns of their clients, by having CRA work closely with tax preparers through the proposed RTPP.

I am also pleased to note that the proposed RTPP supports the goals of the Government of Canada’s Red Tape Reduction Action Plan and Economic Action Plan 2013 by: (i) improving service to taxpayers and tax preparers by helping them get their tax returns right from the

start; (ii) reducing compliance costs for taxpayers and tax preparers because fewer errors mean fewer examinations, reviews, requests for information, and audits later on; and (iii) enhancing the integrity of the tax system by enabling the CRA to positively encourage voluntary compliance.

I encourage taxpayers, tax preparers, and other stakeholders to review the consultation paper and provide input. Through your engagement, we can work together to improve the administration of our tax system.



Kerry-Lynne D. Findlay, P.C., Q.C., M.P.

Invitation for Comments

Closing Date: May 31, 2014

Who may respond: This consultation is open to anyone. Those who prepare tax returns for a fee are encouraged to provide input.

Submissions may be made in either official language. Submissions will be used by officials of the Canada Revenue Agency (CRA) only for the purposes of this consultation exercise.

Submissions can be made online or in writing. Online submissions can be made through the CRA RTPP consultation web page at www.cra.gc.ca/rtp.

Please forward written submissions to:

Registration of Tax Preparers
Program Consultations
Canada Revenue Agency
Place de Ville
806-8th Floor, Tower B
112 Kent Street
Ottawa, Ontario K1A 0L5

Once received, all submissions will be subject to the Access to Information Act (AIA) and may be disclosed in accordance with its provisions. If a request pertaining to your submission is received under the AIA, we will consult you under section 27 of the AIA.

Executive Summary

As governments throughout the world review their processes to determine better ways to reduce non-compliance, a greater emphasis is being placed on the important role played by tax preparers. Recent studies¹ released by the Organisation for Economic Co-operation and Development (OECD) analyze the important role that tax preparers play in tax compliance throughout the world and encourage tax administrations to consider strategies that build on their relationships with tax preparers. While the CRA has been moving to develop improved processes for tax preparers, for example, by improving its electronic services available to them, the CRA is now considering a more systematic approach to its relationship with tax preparers. This would, in turn, influence the CRA's approach for improving compliance.

We are seeking public input on the proposal for a Registration of Tax Preparers Program (RTPP). It is important to note two points about the proposed RTPP:

- Initially, the program would apply to individuals who prepare income tax returns for a fee. The scope of the program would include income tax returns for individuals (Form T1 *General Income Tax and Benefit Return*), and corporations (Form T2 *Corporation Income Tax Return*).

¹ OECD (2008), Study into the Role of Tax Intermediaries, *OECD Publishing*.
doi: 10.1787/9789264041813-en

OECD (2013), Tax Administration 2013: Comparative Information on OECD and Other Advanced and Emerging Economies, *OECD Publishing*.
doi: 10.1787/9789264200814-en

- In the future, consideration may be given to expanding the scope of the program to include individuals who prepare other types of tax returns such as income tax returns for trusts (Form T3 *Trust Income Tax and Information Return*), and GST/HST returns.

The CRA is undertaking consultations on the proposed RTPP to better understand its implications for the tax preparer community. The CRA invites comments from all stakeholders, particularly individuals who are tax preparers who provide services to all segments of the taxpayer population (for example, individuals, small and medium enterprises (SME) and multinational corporations).

Tax Preparers in Canada

As explained above, the proposed RTPP would apply to individuals who prepare income tax returns for a fee. Generally, these individuals fall into one of three categories:

- accountants who prepare income tax returns for a fee and who belong to a provincially regulated body;
- employees of businesses that offer income tax preparation services for a fee; and
- others who offer income tax preparation services for a fee, but who do not fall within the previous two categories.

Note: Those who prepare income tax returns on a volunteer basis and employees who prepare their employer's income tax returns would not have to register.

Registration of Tax Preparers Program – Addressing Recurring Errors

Approximately 70% of individuals and business taxpayers use tax preparers. Despite the extensive use of tax preparers, the CRA continues to identify errors in income tax returns, including those prepared by tax preparers, which require the CRA to contact the taxpayer to ensure that the taxpayer is compliant with their tax obligations.

The following examples demonstrate the magnitude of non-compliance for individual and business income tax returns that has been identified by various CRA compliance programs:

- In 2011-2012, the CRA identified an additional \$1.034 billion² in individual income tax assessments. The majority of this amount was identified by matching income tax returns from individuals to information from employers, financial institutions, and other sources.
- In 2010-2011, the CRA estimated that 17.6%³ of claims or deductions made by individuals on key tax credits and deductions were disallowed following a review of the claim or deduction.
- Research audits that are conducted by the CRA to establish baseline

rates of compliance have found significant error rates in income tax returns filed by SMEs. The CRA's research shows federal tax adjustments of \$1,000 or more for 34.5% of self-employed individual filers in 2009/2010, and for 27.5% of corporate filers in 2007/2008 in the SME sector. Although these adjustments are small in size (on average, approximately \$2,200 and \$6,000 in adjustments for self-employed individuals and corporations, respectively), the high prevalence of these adjustments is a concern given the size of the SME population (there are approximately five million SMEs). The CRA attributes the majority of these adjustments to recurring errors due to a lack of knowledge or inattention.

Recurring errors are currently addressed using a traditional approach to compliance. The traditional approach focuses on the tax return after it is filed, evaluates the extent of non-compliance, and decides on the appropriate intervention or response under the circumstances. Most of the time, interventions target events from the past, using a form of review, examination, or audit activity that involves time-consuming and costly exchanges of information between the CRA and the taxpayer. The proposed RTPP would allow the CRA to address recurring errors and reduce red tape by providing the CRA with the ability to:

- identify individual tax preparers that prepare income tax returns for a fee with a personal identification number (PIN);
- link each tax return via the PIN to the individual tax preparer and business they work for;

² "2011-2012 Annual Report to Parliament" *Canada Revenue Agency* page 28 and 29. (Confidence Validity \$156 million, Processing Review \$213 million, Matching \$665 million)

³ "2010-2011 Annual Report to Parliament", *Canada Revenue Agency* page 38.

- establish the extent to which a particular individual tax preparer or tax preparation business is associated with compliant or non-compliant income tax returns (for example, the recurring errors noted earlier in this section); and
- develop a strategic compliance approach to address any non-compliance issues in income tax returns prepared by tax preparers that prepare income tax returns for a fee. This approach includes education, follow-up visits, development of action plans, and audits of the tax preparer's clients when non-compliance persists.

The CRA is interested in feedback on the reasons why errors are found in income tax returns that are prepared by tax preparers.

Registration of Tax Preparers Program – The Registration Process

Registration would be required for individuals who prepare income tax returns for a fee. Initially, the scope of the program would include income tax returns for individuals (Form T1, *General Income Tax and Benefit Return*) and corporations (Form T2, *Corporation Income Tax Return*). In the future, we may consider expanding the scope of the program to include individuals who prepare other types of tax returns such as income tax returns for trusts (Form T3, *Trust Income Tax and Information Return*), and GST/HST returns.

All individuals who are compensated for preparing income tax returns would be required to register with the CRA and obtain a PIN. This requirement would apply equally to residents and non-residents of Canada who prepare income tax returns. The following individuals would be excluded from the requirement to register:

- An individual preparing the income tax return of their employer.
- An individual providing only typing, reproduction, or other mechanical assistance in the preparation of the return.
- An individual who, in the course of their duties of preparing an income tax return, is not held accountable by their employer for the completeness and accuracy of the return. In this instance, the individual within the organization who would be required to register with the CRA would be the tax preparer who reviews the work of other tax preparers and provides final approval of the income tax return.
- An individual preparing the return as a volunteer, for example, in a volunteer tax assistance program where fees are not charged.

Individuals would apply for registration through an online application process. Applicants would be required to provide certain information including:

- name;
- complete mailing address;
- telephone number including area code;
- e-mail address and fax number, if applicable;

- social insurance number, whether employed or self-employed as a tax preparer;
- number of years of tax preparation experience; and
- membership in a provincially regulated accounting or legal body including personal identification number, if applicable.

Individuals would be required to register once and would be notified periodically to update their information online. Registration would not be refused.

To allow the CRA to associate tax preparers with their employers, every firm in the business of income tax return preparation that is owned by, or that employed more than one registered tax preparer, would also be given an entity identification number (EIN).

Registered tax preparers would be required to submit both their PIN and EIN⁴ with each tax return prepared by the tax preparer. Consideration is being given to publishing a list of registered tax preparers.

⁴ To avoid creating unnecessary identification numbers for businesses, the CRA would determine whether current registration systems such as EFILE, Represent a Client or Business Number registration, could be used for the proposed RTPP. For more information on these registration systems see www.cra-arc.gc.ca/menu-eng.html.

The CRA is interested in feedback on the registration process, who would be required to register, and the challenges that may represent for the tax preparation industry.

The CRA is interested in feedback on the need for both a personal and entity identification number, and the burden that may represent for the tax preparation industry.

The CRA is interested in feedback on the publication of a list of registered tax preparers.

Registration of Tax Preparers Program – A Strategic Compliance Approach

A traditional audit focuses on the taxpayer, rather than on the tax preparer that prepared the return. This means there is little or no opportunity for the CRA to help taxpayers or their tax preparer to reduce non-compliance of the type described previously in this paper.

Similar to other tax administrations with tax preparer registration programs (see Appendix A), the CRA would tailor its compliance approach to help tax preparers improve the reporting compliance of their clients. When errors are made, the CRA would use information gathered through the proposed registration program and past audit history to determine the reasons for the errors. This would then allow the CRA to tailor its activities to the needs of the tax preparer⁵ and the risk of non-compliance,

⁵ Activities could be conducted with the individual tax preparer and/or with the firm that employs the individual tax preparer.

so that the likelihood of future errors is reduced

Activities under this approach would be directed towards improving the overall completeness and accuracy of tax returns. Activities would depend on the type of non-compliance detected and could include: (i) educational visits; (ii) follow up visits; (iii) development of action plans; or (iv) audits of a tax preparer's high-risk clients

Under the third-party civil penalty provisions in section 163.2 of the *Income Tax Act (ITA)*, sanctions apply to those persons who counsel and assist others in making false statements when they file their returns or who are wilfully blind to obvious "errors" when preparing, filing or assisting another person in filing a return. The sanctions are not intended to apply to those persons who make an honest mistake or oversight.⁶

Under the proposed RTPP, in limited situations when a tax preparer has either failed to take reasonable care and exercise proper due diligence to correct errors, or was deliberately non-compliant, the CRA may consider other actions such as imposing sanctions. Sanctions will also be required for situations when a tax preparer prepares a return for a fee but has the taxpayer, or another tax preparer, file the return in an attempt to avoid the requirement to register. These could include reporting the tax preparer to a provincially regulated accounting or legal body, assessing a penalty, introducing a period of monitoring, or revoking a tax preparer's electronic filing privileges. In egregious situations, the CRA would consider the

⁶ For further information refer to IC 01-1, Third-Party Civil Penalties, September 18, 2001 available at www.cra-arc.gc.ca/menu-eng.html.

application of the third-party civil penalty under section 163.2 of the ITA or possibly even de-registration.

The strategic compliance approach would require a robust redress process for situations when a tax preparer disagrees with the CRA's decision to impose a sanction. Redress options would depend on the registration program's legislative and regulatory framework. It is anticipated that the first level of redress would be to an appeals area within the CRA. This could be through an administrative review as is the case with the EFILE program⁷ or through a more formal process of resolving a dispute such as filing an objection. Redress to the courts would be available through an appeal or judicial review process.

The CRA is interested in feedback on: (i) the strategic compliance approach; (ii) sanctions; and (iii) the redress process.

⁷ EFILE is an automated service that permits those who prepare and file taxes on behalf of others to electronically file the current-year income tax and benefit return to the CRA via the Internet. Any firm, organization, or individual who provides tax preparation services can apply to use this automated service, as long as they meet the definition of an applicant and pass the suitability screening criteria. Effective January 1, 2013, any firm, organization, or individual who prepares more than 10 returns must use EFILE to file the current-year income tax and benefit return to the CRA. For more information on the definition of "applicant" and the "suitability screening criteria" see www.efile.cra.gc.ca/l-scrn-eng.html. Applicants that are denied participation in the EFILE program have the right to an administrative review by the Chief of Appeals of their local tax services office. For more information on the right to an administrative review, see www.efile.cra.gc.ca/l-sspnd-eng.html.

Registration of Tax Preparers Program – Enhanced Services

The CRA has several programs currently in place that allow the CRA to engage with third parties who act on behalf of taxpayers. While they have been designed in consideration of the needs of third parties and are available to tax preparers, they have not been designed to exclusively address the needs of tax preparers. For example, the CRA offers the following services to third parties:

- Represent a Client allows the CRA to make confidential taxpayer information electronically available to authorized third parties. Tax preparers are eligible for this service.
- EFILE allows the CRA to accept electronic data through a secure environment. Registrants are able to electronically file the current year income tax and benefit return with the CRA via the Internet. Tax preparers are eligible for this service.⁸
- Income tax technical advisory services are available to the public through the Income Tax Rulings and Interpretations Directorate. This service is used by taxpayers and tax preparers. Tax preparers may request technical advice through advance income tax rulings and technical interpretations. They may

⁸ Businesses that offer income tax preparation services that file returns may only have one EFILE number for all returns filed by the business. As a result, tax returns cannot be linked to individual tax preparers who are employed by the business. This is an important distinction between EFILE and the proposed RTPP.

also submit an enquiry through Represent a Client.

- 1-800 numbers for individual income tax and trust enquiries and business enquiries are also available.

As the CRA's business transformation agenda is implemented through the delivery of services at national levels and by electronic means, the CRA's relationship with tax preparers is changing. The CRA must be conscious of the unique relationship it has with tax preparers, the critical role they play in ensuring compliance, as well as the benefits they provide to the tax system. The CRA would like to ensure that its services continue to address their needs.

Having the ability to identify tax preparers operating within the tax system would allow the CRA to design services to better support tax preparers by reducing red tape and ensuring that individuals who are tax preparers have the necessary information to prepare high-quality returns. These benefits would ultimately be realized by taxpayers.

The CRA is interested in feedback on the types of services that would be beneficial to individual tax preparers and tax preparation businesses, which would enhance the overall completeness and accuracy of tax returns.

Registration of Tax Preparers Program - Reduction of Red Tape

As part of the Government of Canada's Red Tape Reduction Action Plan, the CRA is committed to reducing government red tape.

In January 2011, the Red Tape Reduction Commission (RTRC) was established to obtain a small business perspective on dealing with federal departments and agencies, including the CRA. For purposes of the work of the RTRC, “red tape” is defined to include unnecessary burden and frustration for small businesses caused when complying with federal regulatory programs. More specifically, it includes unjustified or undue burdens placed on small business when, for example, they must plan, collect, process, or report information; when they have to fill out forms, retain data or information; when they are required to respond to inspections or audits; and, when they wait for decisions or feedback.

The traditional approach to tax compliance may involve time consuming procedures from the perspective of a taxpayer. These procedures, which include collecting and reporting information on past activities, responding to enquiries from CRA employees and auditors, and waiting for decisions or feedback in order to determine the appropriate next steps, are considered by taxpayers as adding to the “red tape” burden of government regulation.

In addition, incomplete or inaccurate tax returns may also result in additional assessments of tax and the application of interest and penalties. Further, when

taxpayers disagree with CRA decisions, redress must be sought. These types of procedures are considered by taxpayers to add to the complexity of complying with government regulation.

Similar to other jurisdictions, the CRA would use information gathered through the RTPP to tailor its approach to help taxpayers and tax preparers with compliance. When tax preparers make errors, the CRA would use information gathered through the RTPP to understand the reasons for the error. This would allow the CRA to use its resources in the most efficient and effective way to address the error and ensure that the mistake will not be made in the future.

Improved voluntary compliance and the filing of complete and accurate returns would reduce the number of required interactions with taxpayers who want to be compliant and, ultimately, reduce “red tape” for taxpayers.

The CRA is interested in feedback on the compliance burden for individual tax preparers and tax preparation businesses associated with the proposed registration program.

Appendix A - Examples of Registration Programs in Other Countries

United States

In 2011, the United States implemented a registration program for all paid preparers (defined as attorneys, certified public accountants, enrolled agents, registered tax return preparers, and supervised preparers). A new office, the Return Preparers Office (RPO), was created within the Internal Revenue Service (IRS) and was assigned the mandate of regulating paid tax return preparers through requiring registration, background checks, tax competency testing, and continuing education, as well as detecting and prescribing treatment for non-compliant tax return preparers.

The registration process administered by the RPO allows the IRS to gain an understanding of the return preparer market and to deploy a mechanism for tracing tax returns to paid preparers through a unique identifying number. The tax competency exam (which is applicable only to registered tax return preparers and not to attorneys and certified public accountants), was implemented to establish a minimum benchmark for competency. The ultimate goal of both was to improve the accuracy of the returns prepared by paid tax professionals.⁹

⁹ NOTE: The *IRS Statement on Court Ruling Related to Return Preparers* reproduced below can be found at www.irs.gov/uac/Newsroom/IRS-Statement-on-Court-Ruling-Related-to-Return-Preparers.

On January 18, 2013, the United States District Court for the District of Columbia enjoined the IRS from enforcing the regulatory requirements for registered tax return preparers. In accordance with this order, tax return preparers covered by the program are not required to complete competency testing or secure continuing education. The ruling does not affect the regulatory practice requirements for CPAs, attorneys, enrolled agents, enrolled retirement plan agents or enrolled actuaries. On February 1, 2013, the court modified its order to clarify that the order does not affect

The RPO works with the IRS Office of Professional Responsibility (OPR). The OPR is responsible for the administration of Circular 230, *Regulations Governing Practice before the Internal Revenue Service* and has exclusive authority for all matters related to practitioner discipline, including disciplinary proceedings and sanctions. This includes investigating allegations of misconduct and negligence against attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and registered tax return preparers.

Australia

In Australia, the registration and regulation of tax practitioners is the responsibility of an independent statutory body. The Australian Tax Practitioners Board is a national board that is responsible for ensuring compliance with the *Tax Agent Services Act 2009* (TASA), including the Code of Professional Conduct (Code). This is achieved by:

- administering a system to register tax practitioners, ensuring they have the necessary competence and personal attributes;
- providing guidelines, information and webinars on relevant matters;
- investigating conduct that may breach the TASA, including non-compliance with the Code, and breaches of the civil penalty provisions; and

the requirement for all paid tax return preparers to obtain a preparer tax identification number (PTIN). Consistent with this modification, the IRS reopened the online PTIN system. The IRS issued the following statement in regards to this issue: “*We remain confident in our legal authority and committed to protecting taxpayers through implementing reasonable standards in the tax preparation area. Our appeal of the district court opinion was filed on March 29, 2013.*”

- imposing administrative sanctions for non-compliance with the Code.

Professional associations are identified as recognized associations within regulations of TASA for the purposes of providing professional qualification and continuing education requirements.

The United Kingdom¹⁰

The United Kingdom (UK) has developed the “Tax Agent Strategy” after extensive consultation with tax practitioners in the UK. This strategy, which has not yet been implemented, envisages a registration process whereby existing separate registration processes will be replaced by a Unique Agent Reference (UAR). A tax agent will be subject to certain verification checks upon application for the UAR. Once the UAR is issued, the agent will be allowed to access HM Revenue & Customs (HMRC) Online Services that are only available to tax agents.

The HMRC will also create “Agent and Client Statistics” that will bring together information held on HMRC systems about agents and their clients’ filing, payment, or compliance history. HMRC will use information from “Agent and Client Statistics” to target support at agents that need it to help their clients comply. It will also assist HMRC to identify and share good agent practice.

HMRC has tested an initial model of “Agent and Client Statistics” through a pilot study. HMRC selected over 30 agents where either:

- less than 80% of their clients submit returns on time; or
- less than 60% of their clients pay on time.

Through the course of the pilot, HMRC representatives met with the tax agents to explore why their client data is not what would normally be expected. The pilot has been evaluated and HMRC will work closely with agent representative bodies to develop further pilots.

¹⁰ www.hmrc.gov.uk/agents/strategy/overview.htm