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Earning Credits

Service and fairness issues in the assessment of tuition tax credits for expenses incurred attending educational institutions outside Canada

Ombudsman special report, March 2012 | J. Paul Dubé, Taxpayers' Ombudsman

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“Earning Credits”

TAXPAYER BILL OF RIGHTS

1. You have the right to receive entitlements and to pay no more and no less than what is required by law.
2. You have the right to service in both official languages.
3. You have the right to privacy and confidentiality.
4. You have the right to a formal review and a subsequent appeal.
5. You have the right to be treated professionally, courteously, and fairly.*
6. You have the right to complete, accurate, clear, and timely information.*
7. You have the right, as an individual, not to pay income tax amounts in dispute before you have had an impartial review.
8. You have the right to have the law applied consistently.
9. You have the right to lodge a service complaint and to be provided with an explanation of our findings.*
10. You have the right to have the costs of compliance taken into account when administering tax legislation.*
11. You have the right to expect us to be accountable.*
12. You have the right to relief from penalties and interest under tax legislation because of extraordinary circumstances.
13. You have the right to expect us to publish our service standards and report annually.*
14. You have the right to expect us to warn you about questionable tax schemes in a timely manner.*
15. You have the right to be represented by a person of your choice.*

**Service rights upheld by the Taxpayers' Ombudsman*

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Report Summary

Students who attend post-secondary educational institutions in Canada are eligible to apply for a non-refundable tax credit for tuition fees and related expenses.¹ The tax credit for these expenses, which is administered by the Canada Revenue Agency (CRA), reduces the amount of income tax the student has to pay.

The student's claim for the tuition tax credit was denied even though that educational institution met the eligibility criteria.

This tuition tax credit is also available to students who attend certain educational institutions outside Canada, provided the institution meets conditions set out in the *Income Tax Act*.

We took note of several media accounts of students who had attended even well known universities outside Canada and were nonetheless denied the tuition tax credit. Our Office also received complaints from students attending educational institutions outside Canada who felt, as a result of being denied the tuition tax credit, that they were being treated unfairly by the CRA. They complained that the CRA's assessment of their claims had not been based on the criteria set out in the *Income Tax Act*, but solely on whether or not the educational institution they attended outside of Canada was on a pre-approved list. The allegation was that rather than assess the claim for the tuition tax credit by applying the criteria in the *Income Tax Act*, CRA employees were simply consulting a list of foreign educational institutions. If the expenses being claimed were in relation to an educational institution that was not on the list, the student's claim for the tuition tax credit was denied even though that educational institution met the eligibility criteria in the *Income Tax Act*.

Our investigation found those complaints to have merit. The CRA apparently came to the same conclusion because, as we progressed with our investigation, the CRA began to take steps to address the problem. Within months of the commencement of our investigation, the CRA began clarifying and re-enforcing its procedures to ensure consistent application by its employees.

¹ The tuition tax credit determined under subsection 118.5(1) of the *Income Tax Act* may be claimed by the student and any unused portion may be transferred to, and claimed as a tax credit by, the student's spouse or the student's parent or grandparent. The tuition fees may be paid by the student personally or by another person on the student's behalf. <http://www.cra-arc.gc.ca/E/pub/tp/it516r2/it516r2-e.html>

Because the CRA took steps in 2010 to clarify assessment procedures and criteria for the tuition tax credit we did not report on the issue or make recommendations at that time. We monitored the situation and noted that the media continued to publish stories about the confusion and disappointment experienced by students when their claims for tuition tax credits were denied by the CRA.

In this report, the Ombudsman recommends that the CRA continue to ensure that the assessment of claims for the tuition tax credit be based on the provisions of the *Income Tax Act* and not solely on internal practices. The Ombudsman also recommends that the CRA do more to inform Canadians about the availability of tuition tax credits for expenses incurred attending educational institutions outside of Canada, as well as the eligibility criteria.

The Issue

A tuition tax credit is a non-refundable tax credit that students² may claim when filing their income tax return. The purpose of a tuition tax credit is to allow students to reduce their tax payable by providing a tax credit for tuition fees and other expenses paid for certain types of education.

Students who have paid tuition fees during the year to educational institutions in Canada and outside Canada may be eligible to claim this tuition tax credit, subject to the legislative provisions of the *Income Tax Act*.

The types of educational institutions outside Canada whose fees are eligible for the tuition tax credit are described at paragraph 118.5(1)(b) of the *Income Tax Act*. Paragraph 118.5(1)(b) refers to full-time attendance at “a university outside Canada in a course leading to a degree.” The term university is not defined in the *Income Tax Act*. The educational institution is presumed to qualify as a university outside Canada for the purposes of paragraph 118.5(1)(b) if:

- it has the authority to confer academic degrees of at least the baccalaureate level (Bachelor’s degree or equivalent) according to the education standards of the country in which it is located;
- it has an academic entrance requirement of at least secondary school matriculation standing; and
- it is organized for teaching, study and research in the higher branches of learning.

Also, an institution listed in Schedule VIII of the *Income Tax Regulations* is recognized as satisfying the requirements of paragraph 118.5(1)(b) of the *Income Tax Act*.

Note that even if the institution is an accredited and recognized educational institution, the student’s course or learning program must still meet certain conditions in order to be eligible for the tuition, education, and textbook credits.

² The tuition tax credit determined under subsection 118.5(1) of the *Income Tax Act* may be claimed by the student and any unused portion may be transferred to, and claimed as a tax credit by, the student's spouse or the student's parent or grandparent. The tuition fees may be paid by the student personally or by another person on the student's behalf. <http://www.cra-arc.gc.ca/E/pub/tp/it516r2/it516r2-e.html>

Jean's Story - Credit Denied

Our Office received a complaint from Jean, who had paid fees to an educational institution outside Canada. He was upset that his claim for the tuition tax credit had been denied by the CRA. The CRA told him that his claim had been denied because the educational institution he was attending was not on a pre-approved list of foreign universities. Jean felt that he had been treated unfairly, as no effort had been made by the CRA to determine whether the university he attended met the criteria set out in the *Income Tax Act*. Rather, the CRA relied solely on whether the university was on a pre-approved list. Additionally, Jean claimed that when he requested a copy of the list from the CRA, his request was denied. He was told he would have to file an Access to Information request to obtain this list.

The Scope of Our Review

The mandate of the Taxpayers' Ombudsman is fulfilled by upholding the service rights within the Taxpayer Bill of Rights, reviewing complaints from taxpayers, and addressing systemic issues that have a negative impact on taxpayers. A systemic issue is an issue that, if not identified and appropriately addressed, has the potential to have a negative impact in general, to recur, and to generate complaints.

Of the taxpayer service rights that the Taxpayers' Ombudsman is mandated to uphold, the three most relevant to this review are:

- You have the right to be treated professionally, courteously, and fairly (Taxpayer Bill of Rights, Article 5).
- You have the right to complete, accurate, clear and timely information (Taxpayer Bill of Rights, Article 6).
- You have the right to expect the CRA to be accountable (Taxpayer Bill of Rights, Article 11).

The complaints received by the Office of the Taxpayers' Ombudsman suggested that the CRA's processing of claims for tax credits for tuition paid to foreign universities raised questions of a systemic nature, namely:

- Are taxpayers not receiving professional service and fair treatment because the CRA has denied their tuition tax credit claims based solely on whether the university they are attending outside Canada is

on a pre-approved list rather than according to the eligibility requirements established by the *Income Tax Act*?

- Are taxpayers being denied access to complete, clear and timely information because the CRA does not provide direct access to the information used in determining the eligibility of tuition tax credit claims?
- Is the CRA making enough information about tuition tax credits readily available to taxpayers?

Students were receiving inconsistent and unclear answers from the CRA regarding the eligibility of various educational institutions.

Analysis and Findings

In some of the cases we investigated, we indeed found that CRA employees had based the decision on eligibility for the tuition tax credit solely on whether the university the fees had been paid to was on a list of institutions which had previously been determined to be eligible, rather than assessing the merits of each student's claim based on the criteria in the *Income Tax Act*. These lists include educational institutions outside Canada which have applied for confirmation of eligibility from the CRA as being a university outside Canada for tax purposes.

In assessing claims for tuition tax credits for attendance at educational institutions outside Canada, the CRA also relies on many other lists maintained by different organizations in various countries, such as the *Accredited Institutions of Postsecondary Education*, published annually by the American Council on Education³ in the United States.

Historically, if a student submitted a claim for a tuition tax credit for fees paid to an educational institution outside Canada that was not on one of these lists, the claim would often be denied even though the institution they had attended might meet the eligibility criteria set out in the *Income Tax Act*. We also found that the pre-approved lists were not directly accessible to the general public, and that students were receiving inconsistent and unclear answers from the CRA regarding the eligibility of various educational institutions outside Canada. For example, students were receiving inconsistent information on whether they could request a copy of the list, or how they could confirm whether the university they were attending was on a pre-approved list.

³ <http://www.acenet.edu/AM/Template.cfm?Section=Home>

Our Office reviewed the CRA procedures for processing claims for tuition tax credits relating to fees paid to universities outside Canada. When we asked what guidelines and information resources were available to CRA employees responsible for validating the eligibility of these claims, we were told that the CRA employees were provided with links to all the available pre-approved lists as well as relevant instructions for verification of tuition, education and textbook credit claims concerning foreign educational institutions. No mention was made of the *Income Tax Act* or guidelines to interpreting it.

Furthermore, the onus is on an educational institution outside Canada to request official recognition by the CRA to be placed on a pre-approved list of educational institutions in order for its students to benefit from the tuition tax credit. Instructions on how to obtain recognition are provided in the CRA publication RC190 - *Information for Educational Institutions Outside Canada*⁴. Once recognized, the educational institution would be added to a list maintained by the CRA, allowing any future claims for the tuition tax credit made by students who attend that educational institution to be reviewed promptly.

It has long been CRA policy that if a claim for the tuition tax credit was in relation to an educational institution outside Canada that was not on a list referred to by the CRA, that institution should be assessed according to the criteria cited in the *Income Tax Act*. However we found that policy was not always being followed. In some instances, the CRA personnel required that an educational institution outside Canada request and obtain recognition before allowing a student to claim the tuition tax credit. This recognition is not a requirement of the *Income Tax Act* and is contrary to the information provided in the CRA pamphlets RC190 - *Information for Educational Institutions Outside Canada* and RC192 - *Information for Students – Educational Institutions Outside Canada*.

⁴ <http://www.cra-arc.gc.ca/E/pub/tg/rc190/README.html>

Conclusion

During our investigation we found that the provisions of the *Income Tax Act* were not always the determining factor when assessing a student's claim for the tuition tax credit for fees paid to an educational institution outside Canada. Once we began our investigation and raised these issues with the CRA, it clarified its assessment procedures to ensure that a determination of eligibility for the tuition tax credit would not be based solely on whether the educational institution outside Canada was on a pre-approved list. If the educational institution is not on the list, the CRA should then review the institution to determine whether the institution is a university outside Canada for the purpose of paragraph 118.5(1)(b) of the *Income Tax Act*.

The CRA could publicly list those institutions that it recognizes as universities outside Canada for the purposes of the tuition tax credit.

We acknowledge the steps the CRA has taken to ensure that its policy is respected and students receive a fair and proper review when claiming a tuition tax credit with respect to fees paid to an educational institution outside Canada.

Nonetheless, students would benefit from enhanced communication and information from the CRA on this issue. The CRA could go further and publicly list the names of those educational institutions that the CRA accepts as being universities outside Canada for the purposes of the tuition tax credit. Even if such information is not exhaustive, it will provide guidance to students when claiming a tuition tax credit. Information about whether tuition fees paid to an educational institution outside Canada are eligible for the tuition tax credit may even be helpful in deciding which educational institution a student will attend.

The CRA has recently posted on its Web site a list of prescribed universities outside Canada which are recognized as qualified donees for charitable donations. A similar list of foreign universities that qualify as a university outside Canada for the purposes of the *Income Tax Act* would be extremely helpful to students and their families.

The media continue to present accounts of students being denied their tuition tax credit claims because the university they attended outside Canada was not on a pre-approved list or because CRA personnel did not look beyond internal procedures and determine eligibility according to the *Income Tax Act*. More information is needed for students to be able to make informed decisions before they embark on a course of study at an educational institution outside of Canada.

Recommendations

Based on the foregoing, the Taxpayers' Ombudsman recommends that:

1. The CRA ensure that determinations on eligibility for the tax tuition credit are based on the provisions of the *Income Tax Act* and not solely on its internal policies, practices, and procedures.
2. The CRA provide clear, accurate, and timely information to taxpayers about the criteria for determining eligibility for the tuition tax credit.
3. The CRA post on its Web site and in other media a list of the educational institutions outside Canada that have already been recognized by the CRA as a university outside Canada for the purpose of paragraph 118.5(1)(b) of the *Income Tax Act*, while emphasizing that the list is neither determinative nor exhaustive.
4. The CRA provide a clear and accessible explanation that institutions on the list of qualified donees and Schedule VIII of the *Income Tax Act* are automatically recognized as universities outside Canada for the purposes of the tuition tax credit.
5. The CRA consider posting links on its Web site to the lists that are maintained by different organizations in various countries and are utilized by the CRA to verify tuition tax credit claims made by students who attend educational institutions outside Canada.