

DOCUMENT & RECORD RETENTION

One of the most common questions we are asked is "How long must we keep old documents? Can we destroy old accounting and other business related documents?". Although there is no simple answer, this issue of *tax & business Alert* will provide some guidance for our clients and friends. The information and guidance contained herein is intended for persons who are required by law to keep books and records in French or English in Canada according to the *Income Tax Act*, the *Employment Insurance Act*, and the *Canada Pension Plan*. It does not reflect the requirements imposed by other statutes, whether federal, provincial/territorial, or municipal, to maintain adequate books and records. Therefore, additional guidance may be required before disposing of any documents.

RECORDS TO BE KEPT

A 'record' includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether written or in any other form."

As a general rule, the Canada Revenue Agency (CRA) does not specify the books and records to be kept. However, books and records have to:

- permit the taxes payable or the taxes or other amounts to be collected, withheld, or deducted by a person to be determined;
- substantiate the qualification of registered charities or registered Canadian amateur athletic association for registration under the Act;
- permit the verification of all charitable, athletic, and political donations received for which a deduction or tax credit is available; and
- be supported by source documents that verify the information in the books and records.

A **source document** includes items such as sales invoices, purchase invoices, cash register receipts, formal contracts, credit card receipts, delivery slips, deposit slips, work orders,

Documentation relating to long term transactions such as records supporting the acquisition and capital cost of investments and other capital property held by a person (including registered charities and registered Canadian amateur athletic associations), should be maintained until the day that is six years from the end of the last tax year in which such a transaction could enter into any calculation for income tax purposes.

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dockets, cheques, bank statements, tax returns, and general correspondence whether written or in any other form.

In addition, other documents, whether written or any other form, including supporting documents such as accountant's working papers that were used to determine the obligations and entitlements with respect to taxes payable, collectible or to be remitted are considered part of the books and records of the taxpayer and must be made available to the CRA.

KEEPING RECORDS

Keeping **books and records** pertains to a system of recording financial and other information. Records are considered to be kept electronically when information is created, processed, maintained and stored electronically.

The Canada Revenue Agency recognizes:

- traditional books and records (including supporting source documents) produced and retained in paper format; and
- books and records produced and retained in an electronically readable format that can be related back to the supporting source documents and which are supported by a system capable of producing an accessible and useable copy.

ELECTRONIC RECORD KEEPING

A person who is required to keep books and records is responsible for keeping the books and records in a way that will ensure the reliability and readability of the information recorded.

All books and records (including source documents) that originate in paper format must be kept except where an acceptable imaging or microfilming program, as explained in the following section, is in place. Paper format also includes paper source documents that are entered into an electronic record-keeping system.

A person who is required to keep records and who records them electronically must retain those records in an electronically readable format. This means that

WHO HAS TO KEEP BOOKS AND RECORDS?

A person has the meaning assigned by subsection 248(1) of the *Income Tax Act*. Therefore, in addition to individuals, a "person" in this context includes a corporation, a trust, and any exempt entity listed in subsection 149(1) of the Act such as a registered charity, a registered Canadian amateur athletic association, and a non-profit organization.

Books and records must be kept by every:

- person carrying on a business;
- person who is required to pay or collect taxes or other amounts according to the *Income Tax Act*, the *Employment Insurance Act*, and the *Canada Pension Plan*;
- registered charity or registered Canadian amateur athletic association; and
- registered agent of a registered political party or an official agent for a candidate in a federal election.

a person who uses computerized systems to generate books and records must retain the electronic records, even when a hard copy is kept.

Electronically readable format means information that is supported by a system capable of producing an accessible and useable copy.

- Accessible copy means that the taxpayer must provide an acceptable copy of the electronic records in an electronically readable and useable format to CRA auditors to allow them to process the electronic records on CRA equipment.
- A copy is useable if the electronic records can be processed and analysed with CRA software.
- The useable copy must be in a common data interchange format that is compatible with CRA software.
- Electronic files retained in an encrypted or backup format must be able to be restored at a later date to an accessible and useable state to meet CRA requirements.

RETENTION PERIOD

Books and records have to be kept for the period or periods provided by the *Income Tax Regulations* or until the Minister gives written permission for their disposal. Failure to comply with this requirement could result in prosecution by the CRA.

Under the Act, books, records, and their related accounts and source documents, have to be kept for a minimum of six years from the end of the last tax year to which they relate. The tax year is the fiscal period for corporations and the calendar year for all other taxpayers.

Under the *Employment Insurance Act* and *Canada Pension Plan*, the retention period begins at the end of the calendar year to which the books and records relate.

The prescribed retention periods for certain books, records, and their related accounts and source documents are specified in Regulation Part 5800. The required retention periods can be summarized as follows:

- for a corporation, two years from the date of the dissolution of the corporation (in the case of corporations that amalgamate or merge, books and records have to be retained on the basis that the new corporation is a continuation of each amalgamating corporation);
- for any non-incorporated business, six years from the end of the tax year in which the business ceased;
- or the duplicate donation receipts of a registered charity or registered Canadian amateur athletic association, other than receipts for donations of property which are to be held for a period of not less than ten years, two years from the end of the calendar year in which the donations were made;

LOCATION OF RECORDS

The books and records must be kept at the person's place of business or residence in Canada or another place designated by the Minister and must, upon request, be made available to officers of the CRA for audit purposes at all reasonable times.

Books and records kept outside Canada and accessed electronically from Canada are not books and records in Canada. Access to electronic records means that the taxpayer must provide an acceptable copy of the electronic records in an electronically readable and useable format to CRA auditors so that they can process the electronic records on CRA equipment.

- for other specified records of registered charities and registered Canadian amateur athletic associations, two years from the date the registration is revoked; and
- for records relating to political contributions, two years from the end of the calendar year to which they relate.

There are no similar provisions in the *Employment Insurance Act* or *Canada Pension Plan*.

Exceptions to the rules

The Minister may exempt a person or class of persons from the requirement to keep records electronically according to the Act.

tax & business ALERT has been prepared by LEVI KATZ, LLP for the general information of our clients, staff and other interested parties. The enclosed comments are of a general nature and are not intended to cover all aspects of the subject matter. Prior to implementing any planning based upon information in this publication, the specific facts pertaining to any particular situation should be carefully considered. We will be pleased to assist in this regard and to provide further details pertaining to the matters discussed herein.

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Books and records may be destroyed at an earlier time if the Minister gives written permission for their disposal. To get such permission, a person can apply in writing to the director of his or her tax services office. A written request, signed by the person or an authorized representative, should provide the following information:

- a clear identification of books, records, or other documents to be destroyed;
- the tax years for which the request applies;
- details of any special circumstances which would justify destroying the books and records at an earlier time than that normally permitted; and
- any other pertinent information.

The Minister may, by registered letter or by a demand, served personally by a representative of the CRA, require specific records to be kept for an additional period of time that will be stipulated in the letter or demand.

If a return required by the Act is filed late, the books and records referred to in the paragraph above must be kept for six years from the day the return is filed.

Every book and record necessary for dealing with a notice of objection or appeal must be kept until the notice of objection or appeal is disposed of and the time for filing any further appeal has expired.

The books and records of a deceased taxpayer or a trust can only be destroyed upon receipt of a clearance certificate issued according to the Act, concerning the distribution of all property.

When the CRA gives permission to destroy books and records, this permission applies only to information required to be kept under the legislation administered by the CRA, and does not imply permission to destroy any books and records required to be kept under any other legislation, or by any other department or government agency.

The minimum retention period for the records referred above is generally determined by the last tax year when a record may be required for purposes of the Act, and not the year when the transaction occurred and the record was created. For example, documentation relating to long term

ACCIDENTAL DESTRUCTION OR LOSS

If any electronic records required to be maintained are lost, destroyed, or damaged, the person must report this situation to the Director of the local tax services office and recreate the files within a reasonable period of time.

transactions such as records supporting the acquisition and capital cost of investments and other capital property held by a person (including registered charities and registered Canadian amateur athletic associations), should be maintained until the day that is six years from the end of the last tax year in which such a transaction could enter into any calculation for income tax purposes.

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THE RESPONSIBILITY IS YOURS

A person who keeps records whether in writing or any other form, is not relieved of any of the record keeping, readability, retention, and access responsibilities because he or she contracts out the record keeping function to a third party such as a bookkeeper, accountant, an electronic commerce transaction manager, an application service provider, an Internet service provider, through a time share, service bureau, or other such arrangements.

The person must ensure that these requirements are met in the event of third party changes such as, software and/or hardware conversions and upgrades, bankruptcy, or migration to/from a third party. The person is responsible for keeping the records and for providing access to authorized CRA officials.

ABOUT LEVI KATZ

LEVI KATZ is a firm of chartered accountants that traces its origin in Montreal to 1950. We pride ourselves on being more than just an accounting firm. We offer an effective blend of personalized service, experience and technological leadership, coupled with a steadfast commitment to consistently deliver excellence.

Our Chartered Accountants and Business Consultants provide advisory services on a broad range of issues to both our individual and corporate clients. The members of our firm possess unique talents, expertise and experience, giving our clients access to a knowledge base of considerable breadth and depth. Together with our support personnel, we share a commitment to developing practical solutions for the business challenges of today, and to devising strategies for tomorrow.

OUR SERVICES

Our firm takes pride in adding value to every client that we serve through our extensive expertise and proactive approach to your financial needs. We match our dedication to adding value with experience and expertise: we have experience in servicing virtually every type of industry and professional practice.

TAXATION

Our office has a strong basis in federal and provincial tax issues. Our tax group has been in existence for 50+ years and is highly qualified and experienced. Our accountants work hard to minimize your taxes, yet make sure that you fulfill your tax requirements ethically while working to add value. We can fill a variety of tax needs, both domestic and international as well as corporate and personal. Our specialties lie in tax reporting and representation, tax planning (business, personal, divorce and litigation), tax structuring of entities and transactions and tax research.

FINANCIAL

Levi Katz can meet all of your basic financial needs with our exemplary Accounting Services Group that can truly add value whether it's your business or your personal finances that we are reviewing. We work with business entities as well as non-profits and foundations. Our accounting services include; auditing and compilation review of financial statements, budgets and forecasts, and government reporting. We won't simply process your financial statements, our mission is to add value. We will go the extra mile to help you forecast or locate opportunities that you may be missing.

BUSINESS CONSULTING

Levi Katz's Business Consulting unit has proven itself as a valuable resource to businesses of all kinds. We can help you plan your future, whether you see it coming or not. We can help you bring seminal business events to life; like mergers and acquisitions, business valuation, leases and contracts, or business development plans, all of which take a huge amount of planning and attention to detail. If there are no big events on your horizon, we can still be of service by helping you to anticipate the unexpected through our forecasting, real estate projections, risk management assessments, or our feasibility studies. We look at your business and all of its many facets, to find both issues and opportunities and bring that valuable insight to you.

LITIGATION SUPPORT AND DISPUTE RESOLUTION SERVICE AREAS

- **Civil and criminal Fraud Investigation**
- **Management and employee fraud and theft**
- **Identification of secret commissions and kickbacks**
- **Sarbanes-Oxley compliance audits**
- **Sarbanes-Oxley 404 audits**
- **Intellectual Property Litigation Support**
- **Training on fraud awareness and prevention**
- **Due Diligence Audits**
- **Insurance claim assistance**
- **Retail sales audits**
- **Contract dispute resolution**
- **Professional negligence litigation support**
- **Fraud prevention program design, implementation and evaluation**
- **Bank due diligence audits**
- **Employee background audits**
- **Financial discrepancy analysis**
- **Divorce litigation support**
- **Insurance claim quantification**
- **Breach of contract quantification**
- **Electronic Discovery and Data Recovery**
- **Computer forensics**

CONTACT INFORMATION

LEVI KATZ SENCRL
LLP

4141 Sherbrooke Street West, Suite 240

Westmount, Quebec H3Z 1B8

Tel: (514) 931-5767

Fax: (514) 931-7672

Philip C. Levi, CMC, CFE, FCA, CPA, CA•IFA

philevi@levikatz.com

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