

# Corada Revenue Services

## Criminal Investigations Division General Overview



# Overview of Corada's Tax System

Corada's tax system is based on voluntary compliance and self-assessment.

Taxpayers are responsible for reporting their own assessment of income, expenses, and taxes owing prior to any review by the Corada Revenue Service (CRS). The CRS considers a taxpayer to be compliant when :

- they register when required to do so (businesses)
- they file the required returns on time
- they report complete and accurate information, and
- they remit the amounts owing when due.

The CRS provides forms, guides and other information to taxpayers to help them comply with Corada's tax laws and the majority of Coradans willingly comply with their tax obligations.

The CRS has a role to play in ensuring that all Coradans comply with their obligations and it uses a variety of methods based on a compliance continuum. The CRS approach to compliance is to identify non-compliance as early as possible, intervene as quickly as possible, and take the most appropriate corrective action to efficiently correct non-compliance and to prevent future non-compliant behaviour.

One of the methods used is to conduct audits. The main reasons the CRS carries out audits is to:

- Determine the true amount of taxpayer liability;
- Build trust in the vigilance of the tax administration;
- Provide a disincentive to non-compliance;
- Enforce related legislation/programs;
- Generate revenues.

The CRS also conducts criminal investigations. However, the CRS recognizes that criminal investigations are intrusive to the lives of Coradans and as such, they are the most serious compliance action the CRS can take. The majority of compliance actions taken by the CRS is through outreach, education and utilization of civil remedies such as audits.

In order for charges to be considered in a criminal investigation, there needs to be sufficient evidence to establish that a crime has been committed and that the individual did so with a guilty mind. Factors to determine whether an investigation will be conducted or charges laid are specific to each case taking into account several factors such as jurisprudence and proof of guilt beyond any reasonable doubt.

Generally speaking, whether or not a file is accepted for criminal investigation and possible subsequent prosecution is based on many factors including the evidence to establish that a crime has been committed with a reasonable prospect of conviction if charges are laid.

## How we protect against tax evasion

The CRS's Criminal Investigations Program's (CIP) mandate is to conduct investigations into suspected significant cases of fraudulent non-compliance with the various Acts administered, and to refer for prosecution to the Public Prosecution Service of Corada (PPSC). Also the CIP publicizes each case where sufficient evidence is obtained to support a conviction for wilful non-compliance with these Acts. The major act being administered by the CIP is the *Income Tax Act (ITA)*.

The PPSC will review the charges and take the case to Court. The prosecution service may also assign advisory council to major cases to provide timely legal advice. This lawyer assists the investigative team with legal advice but does not take the case to Court due to his/her involvement during the investigative stage.

## Overview of the Law and Evidence

### The Law

Laws are rules of conduct prescribed or formally recognized as binding and enforced by a governing power.

### Common law

Common law comprises the various principles and rules of action related to government and security of a person and property, which derive their authority solely from usage and custom or from court judgements recognizing, affirming, and enforcing such usages and customs.

### Statutory law

Statutory law refers to laws enacted and established by a legislative body. All federal offences are statutory, but recourse is frequently made to common law to define words used in the statute. For example, paragraph 239(1)(d) of the *Income Tax Act (ITA)* provide for prosecution of a person who "wilfully, in any manner, evaded or attempted to evade, compliance with this Act or Part.", but the acts do not define the terms "wilfully", "evaded" or "attempted to evade". The meaning attached to these words is found in common law or in the dictionary of common usage.

## Criminal law

Criminal law is the branch of law, which defines crimes and provides punishments.

## Civil law

Civil law relates to the establishment, recovery, or redress of private and civil rights.

## What is an Audit?

The principal role of Audit is to conduct quality examinations, or audits, in order to establish the degree of compliance with tax legislation to ensure that appropriate taxes are assessed and entitlements are received. The audit is completed through the examination and verification of the taxpayer's financial records and supporting documentation. There are many varying degrees of audit, which can range from a desk review of expenses to an in-depth, complex review of a major corporation.

Audit programs can make referrals to the Criminal Investigations Program.

## What is a Criminal Investigation?

The Corada Encyclopedia defines a criminal investigation as "... involves the investigation of violations of CRIMINAL LAW", which includes the *Income Tax Act (ITA)*. It is the Public Prosecution Service of Corada that decides whether a matter will proceed through the COURTS, and in making this determination it is not bound by the wishes of the taxpayer or the CRS.

The "civil" versus "criminal" process differs in the evidentiary burden of proving guilt or innocence. **In criminal matters proof must be beyond any reasonable doubt**, whereas in civil cases the proof need only be on a balance of probabilities.

The two processes also differ in the type of penalty handed down. In a criminal matter, convicted individuals either serve a term of imprisonment or pay a fine to the Courts, or both. In civil cases, there can be no imprisonment and the taxpayers may be ordered to pay to the Receiver General of Corada certain sums of money.

Constitutionally, the CRS is responsible for legislating in all areas that relate to income tax and on occasion, in the most egregious cases, under the Corada Criminal Code.

## How is evidence gathered?

The purpose of a criminal investigation is to identify, gather and preserve evidence. Almost anything can constitute evidence, according to the particular circumstances of a case. Evidence must be factual or based upon factual grounds. Opinion evidence is admissible, so long as the witness offering such evidence can satisfy the court that he or she qualifies as an expert on a specific matter.

Evidence can also be categorized by the forms it takes and the purpose it serves; e.g., real objects, documents or testimony.

While there are statute and common-law rules of evidence and admissibility that have developed over the centuries, there is no one set way an investigator must conduct an investigation. In other words, there are no statutory (or court) imposed procedural rules for the general investigation of crime.

An investigator may question anyone believed able to offer useful information, but that person is not compelled to answer those questions. However, once a decision is made to potentially charge a taxpayer with a criminal offence, the investigator must caution the taxpayer immediately that they are not required by law to answer any question put to them. The taxpayers must also be told without delay that they are entitled to call a lawyer for advice.

For a criminal investigator there are several methods of obtaining evidence:

- Search warrant (section 487(1) Criminal Code (CC))
- Special search warrants (CC 462.32)
- Production order (CC 487.014 or 487.018)
- General warrants (CC 487.01) with or without an assistance order
- Obtaining evidence seized by other law enforcement agencies (CC 490(15))
- Informed voluntary consent
- Inquiry (Section 231.4 of the (ITA))
- Commission evidence (CC 709)
- Mutual Legal Assistance Treaty (MLAT) (Mutual Legal Assistance in Criminal Matters Act) (MLACMA)
- Tax Treaty Request
- Surveillance

Chart - CIVIL AND CRIMINAL

Factors	Civil System	Criminal System
<b>Evidence gathering tools</b>	<p>Information can be compelled from taxpayers:</p> <ul style="list-style-type: none"> <li>• Audit process/books and records reviews</li> <li>• Internal Corada Tax data</li> <li>• Interviews</li> <li>• Requirements, including 3<sup>rd</sup> parties</li> <li>• Electronic Funds Transfer data</li> <li>• Tax Treaty Request</li> </ul>	<p>Must consider Charter right against “self-incrimination:</p> <ul style="list-style-type: none"> <li>• Search warrants</li> <li>• Production orders</li> <li>• Voluntary interviews</li> <li>• Financial Intelligence Unit disclosures</li> <li>• Static surveillance</li> <li>• Internal Corada Data via affidavits</li> <li>• Inquiry</li> <li>• Commission evidence</li> <li>• Mutual Legal Assistance Treaty (MLAT) (Mutual Legal Assistance in Criminal Matters Act) (MLACMA)</li> <li>• Tax Treaty Request</li> </ul>
<b>Legal restraints</b>	<ul style="list-style-type: none"> <li>• Admissibility of supporting documentation/evidence is not governed by common law</li> <li>• Taxpayer Bill of Rights</li> <li>• Taxpayer compelled to answer and provide documents</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence admissibility is governed by strict rules (<i>Corada Evidence Act</i>)</li> <li>• <i>Corada Charter of Rights and Freedom</i> places significant restraints, including right against self-incrimination</li> </ul>
Factors	Civil System	Criminal System
<b>Prevailing Jurisprudence on audit vs. investigations</b>	<ul style="list-style-type: none"> <li>• Purpose is to establish tax obligations</li> <li>• Audits can run parallel to investigations; but cannot share audit information once file is accepted for investigations</li> </ul>	<ul style="list-style-type: none"> <li>• Purpose is to investigate and criminally prosecute</li> <li>• Investigations can share information with audit to support civil assessments</li> </ul>
<b>Standard of proof</b>	<ul style="list-style-type: none"> <li>• On a balance of probabilities</li> </ul>	<ul style="list-style-type: none"> <li>• Beyond a reasonable doubt</li> <li>• Must prove criminal intent (mens rea) as well as an action to deceive (actus reus)</li> </ul>
<b>Results</b>	Reassessment, interest and penalties	<ul style="list-style-type: none"> <li>• Fingerprinting (criminal record)</li> <li>• Court Fines</li> <li>• Incarceration</li> </ul>



## Judicial Authorizations

**Search Warrant** – A search warrant is the most common judicial tool used by investigators. It allows those named on the warrant to search and seize the books and records and things that were made available during the course of the audit along with items the taxpayer withheld, such as a second set of books and records, missing cash register tapes etc.

In order to obtain a search warrant the investigator must have reasonable grounds to believe that an offence was committed, that records or things that are evidence of the offence exist and are to be found in a particular location.

**Production orders** - A Justice of the Peace (JP)/Judge may order a person who is not under investigation to produce documents or copies of documents certified to be true copies to a peace officer or public officer within a time frame and place to be named in the order.

A general warrant can only be used for situations when there is no other provision under the Criminal Code or any other Act of Parliament that would provide for a warrant, authorization, or order permitting the technique, procedure or device to be used or the things to be done. In most cases, a search warrant or a production order pursuant to the CC can be obtained to secure the necessary evidence.

In order to obtain a search warrant, production order or a general warrant, investigators will have to prepare an affidavit titled an “Information to Obtain”.

## Information Sharing

Domestic information sharing can include obtaining information from various Government departments. The sharing of information is governed by confidentiality provisions within the Revenue legislation and various Privacy Legislation. Often to facilitate exchanges the CRS enters into various memorandums of understanding.

## Information Sharing with Law Enforcement

Referrals can come from internal programs such as civil audits or other law enforcement programs.

A joint forces operation (JFO) is a special project with the police with identified subjects and anticipated criminal charges including revenue offences. For the purposes of a JFO, the term "police" includes law enforcement agencies whose mandates include investigating criminal offences.

In Corada, the Revenue Service has a memorandum of understanding with the national police force. Generally, the CRS cannot share taxpayer or confidential information with

outside parties. However, specific legislative provisions exist for exchanging information with Law Enforcement.

## Exchange of Information Agreements

For Corada, generally, the CRS cannot share taxpayer or confidential information with outside parties. However, specific legislative provisions exist for exchanging information with foreign jurisdictions.

Along with the revenue legislation, Tax Treaties, Tax Information Exchange Agreements (TIEAs), the Convention on Mutual Administrative Assistance in Tax Matters (MAAC), and other related agreements (collectively “legal instruments”), give the revenue agency authority to exchange information with foreign jurisdictions. The wording of individual legal instruments may vary, but the intent is to allow information exchanges to “the widest possible extent”. Nevertheless, fishing expeditions (requests for information that are speculative in nature) are not permitted.

Each legal instrument specifies that communications between contracting states shall only take place between “competent authorities”. Each jurisdiction has designated persons/positions (competent authorities) who are permitted to discuss tax matters and exchange information.

**NOTE:** Confidential information given to or received from foreign governments which is not exchanged between competent authorities is not legally valid.

The type of request that investigators for the CRS will likely deal with when conducting a major case is a “Specific request”. Specific requests are generated usually as a consequence of an audit/investigation. Some examples include: verifying particular transactions, securing foreign bank information, confirming the existence of contracts, determining residency, etc. However, other specific requests may also be raised on a case-by-case basis.

When requesting specific information from a Treaty/TIEA/MAAC Partner, a few principles should be considered before making a specific request. These are:

- All reasonable efforts (exhausted **all reasonable means**) should have been made to secure the information domestically.
- As the treaty partner will treat this as mandatory workload and generally go to some lengths to obtain the information, care should be taken to ensure that **the information requested is relevant** and genuinely necessary in determining a taxpayer's liability.
- Regardless of the laws or powers of another jurisdiction, information may not be requested from a treaty partner if we would be unable to obtain the information under similar circumstances in Corada.



Situations have been identified whereby a treaty partner may not be obligated to secure and supply the information requested. These are:

- The request is at odds with its laws or administrative practice;
- The disclosure would be contrary to its public policy; or
- There is a risk of disclosing trade and business secrets.

## Overview of Corada's Offences and Penalties

### What is tax fraud and tax evasion?

**Tax fraud** is an offence under section 380 of the Criminal Code. Like tax evasion, tax fraud involves using deceit, falsehoods and any other fraudulent means to defraud a person or the public of money or anything else of value.

**Tax evasion** is an offence under section 239 of the Income Tax Act and section 327 of the Excise Tax Act.

Tax evasion involves deliberately ignoring a specific part of the law in order to evade taxes. For example,

- falsifying records and claims
- purposely not reporting income
- inflating expenses
- claiming a fraudulent refund or benefit

Tax evasion involves willful deception. To successfully prosecute tax evasion, the Government of Corada must demonstrate that a wrongful action has taken place (*actus reus*) in conjunction with a conscious intent to evade taxes (*mens reas*).

**ACTUS REUS** - Something has been done (the “ACT”) that is prohibited by law.

**MENS REA** – “Guilty mind” There was a conscious awareness on the part of the accused that their actions would result in a specific consequence.

It is necessary to show that the conduct (*Actus reus*) was engaged with the specific intent to evade tax (*Mens rea*).

In general, the test of guilt is one that requires proof of fault, culpability both in thought and action.

Tax evasion is committed by individuals and businesses from all “walks of life”. It is not specific to any nationality, race, age group, income range, or geographical location.

Combatting tax evasion, tax fraud, and other financial crimes is important for the protection of Corada’s tax base. The quality of life that all Coradan enjoy is supported by the taxes we pay. Revenues collected help to fund programs and services such as health care, child care, education, and infrastructure projects that benefit all Coradans.

In Corada, tax evasion is a criminal offence. Once convicted, tax evaders can face penalties, court fines, and even incarceration—in addition to having to pay the taxes they tried to evade, plus interest. The major Act being administered is the *Income Tax Act* (ITA) although we also use the *Criminal Code of Corada*.

## Offences

Under the Corada *Income Tax Act* persons convicted of failure to file a return or failure to comply with an obligation can face a fine ranging from \$1,000 to \$25,000 and up to one year imprisonment can be imposed.

Persons convicted of tax evasion will face fines ranging from 50% to 200% of the evaded taxes and up to two years imprisonment. Further, upon conviction on indictment, a fine ranging from 100% to 200% of evaded taxes and up to five years in imprisonment can be imposed.

The “tax on which convicted” represents the federal tax the taxpayer evaded or sought to evade. This is the amount on which the taxpayer was criminally convicted of tax evasion and/or fraud in a court of law.

Section **239** – Every person who has:

- **(a)** made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation,
- **(b)** wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act, or
- **(c)** conspired with any person to commit an offence described in paragraphs 239(1)(a) and 239(1)(b)

Some of the sections of the *Criminal Code* Corada revenue investigators utilize are:

- Section 380 Fraud
- Section 368(1) Uttering Forged Documents
- Section 462.31 Laundering Proceeds of Crime

If convicted of fraud under section 380 of the Criminal Code of Corada, an individual can face up to 14 years in jail.

**FRAUD**

Section **380 (1)** - Every one who, by deceit, falsehood or other fraudulent means, defrauds the public or any person of any property, money or valuable security or any service where the value of the subject-matter of the offence exceeds five thousand dollars.

**LAUNDERING PROCEEDS OF CRIME**

Section **462.31** - Every one commits an offence who disguises in any way, any financial asset ***with intent to conceal or convert*** that financial asset, knowing or believing that all or a part of that financial asset was obtained or derived as a result of

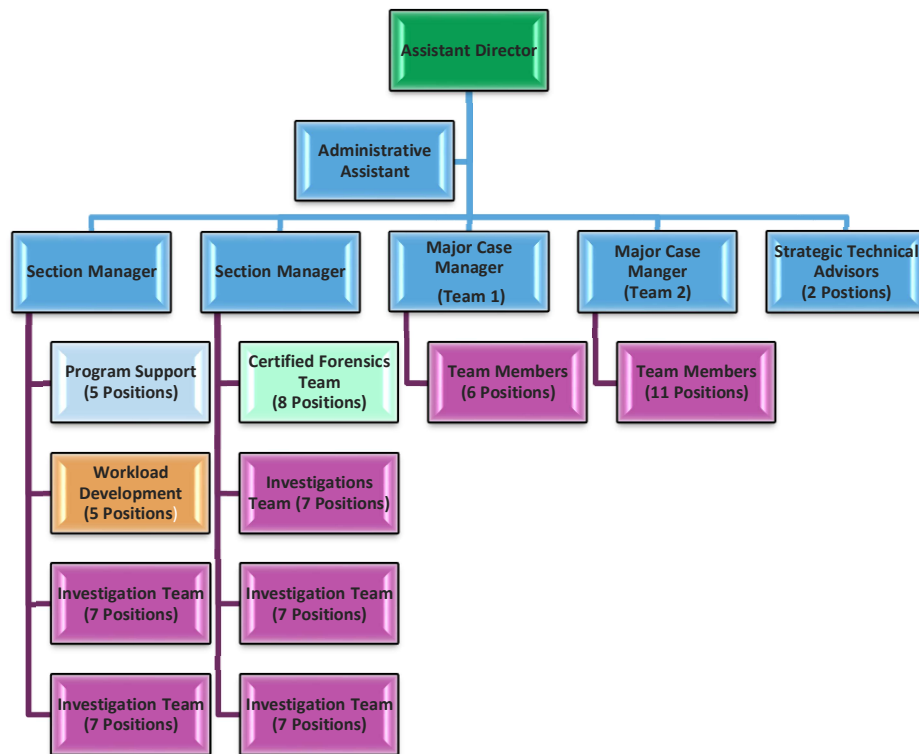
- **(a)** the commission in Corada of a designated offence; or
- **(b)** an act or omission anywhere that, if it had occurred in Corada, would have constituted a designated offence.

**POWER TO SEIZE, RESTRAIN AND FORFEIT PROCEEDS OF CRIME**

Sections **462.32 to 462.35**

# Overview Criminal Investigations Division

## Division Organizational Chart



## Summary of Roles

**Assistant Director** – Responsible for the functioning of the Division including all human resource and financial matters. Signs off on referrals to the Prosecution Service.

**Section Manager** – Responsible for the management of the teams assigned to his or her section. Also, assists the Assistant Director with the management of the Division.

**Major Case Manager** - The case manager, who is also known as team commander in law enforcement MCM structures, takes on the strategic responsibilities and ultimately has the responsibility for a case assigned to his or her team that is designated a “major case”. The case manager supervises the investigation and manages the human, material, and financial resources related to that investigation.

**Strategic Technical Advisor** – The strategic technical advisors provide timely and informed technical, accounting and policy guidance, and support to the criminal investigators in the general conduct of their investigations.

**Program Support** – This is a centralized team that supports the criminal investigations teams. For example this team will conduct all property searches, provide assistance for searches and court preparation, and assist with data entry.

**Workload Development** – Develops and maintains relationships with internal (Audit, Collections, Appeals, etc.) and external (law enforcement and government agencies) stakeholders. Receives and evaluates referrals to criminal investigations to determine if investigations should be initiated.

**Certified Forensics Team** - Computer Forensic Analysts (CFAs) working within the Criminal Investigations Program use specialized tools, techniques and processes to search, seize, analyze and preserve the integrity of the digital evidence.

**Investigations Teams** - to investigate significant cases of tax evasion and, where appropriate, referred to the Public Prosecution Service of Corada for criminal prosecution