

Keep track of your retirement contribution room or be hit with nasty penalty taxes

Jamie Golombek: No matter which tax-deferred plan you choose for your long-term savings, it's critically important to make sure you don't over contribute



[JAMIE GOLOMBEK](#)
September 22, 2017
11:44 AM EDT

Last Updated
September 22, 2017
11:47 AM EDT

Canadians appear to be embracing our various retirement savings accounts. According to recent census data released last week by Statistics Canada, nearly two-thirds of Canada's 14 million households made some form of retirement contribution in 2015. Just over 40 per cent of households contributed to a TFSA, 35 per cent to an RRSP and 30 per cent to a registered pension plan, with almost 10 per cent of households contributing something to all three.

But no matter which tax-deferred plan you choose for your long-term savings, it's critically important to make sure you don't contribute more than your allowable contribution room.

For TFSAs, your contribution room is \$5,500 for 2017 plus any unused room from prior years. Someone who has been a resident of Canada and at least 18 years of age since TFSAs were introduced in 2009 would have a total cumulative TFSA contribution room of \$52,000, if they have never made a contribution. Also, any TFSA withdrawals increase your available contribution room beginning the following calendar year.

Your RRSP contribution room is a bit more complicated as it's based on your personal earnings history, is cumulative and therefore can go back decades. For 2017, your RRSP contribution limit is 18 per cent of your previous year's (i.e. 2016) "earned income," up to a yearly maximum of \$26,010 for 2017, less any pension adjustment plus the cumulative unused contribution room carried forward from prior years. Earned income typically includes employment income, self-employment income and rental income and excludes investment or pension income.

It's very important to keep track of your available contribution room less you be **subject to nasty penalty taxes for over-contributing — even if done accidentally.** **The penalty for over-contributing beyond the allowable lifetime \$2,000 cushion is one per cent per month on the over-contributed amounts, which is equal to 12 per cent annually — a harsh penalty meant to deter such over-contributions.**

If you accidentally end up contributing more to your RRSP than you're allowed, **you can correct this by requesting a withdrawal from your RRSP issuer.** While the amount withdrawn may be subject to withholding tax, if you do not make the withdrawal using CRA's T3012A Tax Deduction Waiver Form, this can be **recovered later when you file your tax return.** Note that even if you withdraw the over-contribution, you will still be responsible for the one per cent penalty tax for each month the over-contributed amount remained in your RRSP prior to withdrawal so it's best to withdraw the excess as soon as you become aware of it.

The penalty tax is calculated on Form T1-OVP, "Individual Tax Return for RRSP, SPP and PRPP Excess Contributions." This daunting form is not for the faint of heart as it's four pages long, comprises five charts, one of which has 132 boxes to complete, and likely ranks high on the list of one of most of the most **intimidating tax forms in existence today.**



The T1-OVP form must be filed within 90 days of the end of each year in which you have an excess RRSP contribution (beyond the \$2,000 permitted overage) and failure to file this form on time can lead to additional late-filing penalties.

A tough lesson in the consequences of what happens if you over-contribute to your RRSP was learned by a Toronto taxpayer in a recent decision of the Tax Court, released late last month.

The CRA reviewed the taxpayer's RRSP contributions for the 2004 through 2013 taxation years and assessed him an over-contribution penalty tax totalling about \$8,500. To make matters worse, the CRA also found the taxpayer liable for late-

filing penalties of totalling nearly \$1,400 for not filing the T1-OVP returns to report and pay tax on his over-contributions for each tax year from 2004 to 2013.

The Tax Court decision acknowledged that while it appears that the taxpayer “paid reasonable and careful attention to the Registered Retirement Savings Plan (RRSP) Deduction Limit Statement that was attached to his Notice of Assessment for each taxation year, and ensured that ... the amount of his RRSP contribution for a particular year did not exceed the limit specified in the Deduction Limit Statement for that year,” he nevertheless appeared to be in an over-contribution situation by 2004.

In his defence, the taxpayer explained that he prepared his own income tax returns using a commercial software program. According to the taxpayer, “due to some glitch or other malfunction in the software,” he failed to deduct RRSP contributions he made in 1995 and 1999 on his return and thus his total available RRSP contribution room, as calculated on Schedule 7 of his tax return, was overstated. In other words, he thought he had more available room than he actually had.

The judge found that “rather than there being a glitch in the software, the amount of the intended deduction was not entered on Schedule 7.” This innocent mistake **resulted in an RRSP over-contribution amount and the resultant penalties and late-filing fees.**

The judge was extremely sympathetic to the taxpayer’s situation, writing: “It is my impression that (the taxpayer) is a conscientious taxpayer who was, in the context of his RRSP, reasonably endeavouring to contribute and deduct the appropriate amount each year.” His errors were “due to innocent and reasonable inadvertence.”

Notwithstanding this, however, the judge still ruled that the taxpayer was responsible for the RRSP over-contribution penalties. When it came to the late-filing penalties for failure to file the T1-OVP forms each year, the judge was more forgiving.

As the taxpayer “had conscientiously tracked his RRSP contributions and was **genuinely of the view that he had not made any over-contributions** to his RRSP... **based on his understanding, there was no need to file**” the T1-OVP forms each year.

The judge therefore cancelled the \$1,400 in late-filing penalties since the taxpayer “reasonably believed in, and was operating under, a mistaken set of facts ... and his failure to file (the forms) ... resulted from a reasonable error of fact, so as to be excused.”

Jamie.Golombek@cibc.com

Jamie Golombek, CPA, CA, CFP, CLU, TEP is the Managing Director, Tax & Estate Planning with CIBC Wealth Strategies Group in Toronto.