



ACT NOW! NEW VOLUNTARY DISCLOSURE PROGRAM EFFECTIVE MARCH 1, 2018

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OVERVIEW

Our September 2017 Newsletter outlined significant proposed changes to the Canada Revenue Agency's ("CRA") Voluntary Disclosure Program ("VDP"). The VDP is a CRA administrative program that promotes compliance with Canada's tax laws by encouraging taxpayers to voluntarily come forward and correct any previous errors or omissions in their tax affairs. On December 13th, 2017 and December 15th, 2017, the CRA released IC00-1R6 and GST/HST memo 16.5, respectively, detailing the program updates. The new program is effective March 1, 2018. The VDP applies to disclosures relating to income tax, excise tax (GST/HST), payroll taxes, and other reporting requirements. The term taxpayer includes an individual, an employer, a corporation, a partnership, a trust, a GST/HST registrant or a registered exporter of softwood lumber products.

As an example of the current program; failure to file form T1135 – Foreign Income Verification Statement where a taxpayer had foreign assets with a cost in excess of \$100,000 could result in a penalty of \$2,500 per year. The VDP would potentially allow the penalty to be avoided.

Our goal is to provide updates on topical accounting and tax issues. Information contained in this newsletter is not meant to be a comprehensive summary of the issues raised. Rather, we wish to bring what we believe to be important issues to the attention of our valued clients and readers. We would be pleased to discuss any questions that you, the reader, might have in greater detail.



Similar to the existing program, the CRA has imposed criteria which determine eligibility for the program. The disclosure must meet the following conditions;

- I. be voluntary;
- II. be complete;
- III. involve the application or potential application of a penalty and, for GST/HST applications, the application or potential application of a penalty or interest;

- IV. include information that is at least one year past due for income tax applications and, for GST/HST applications, at least one reporting period past due; and
- V. include payment of the estimated tax owing.

The significant addition to the criteria is that the disclosure must include the payment of the estimated tax owing. While payment was previously encouraged under the old system to halt the accrual of interest at the time the disclosure was submitted, it was not required in order for the disclosure to be valid.

Consistent with the Draft Information Circular issued in September 2017, the CRA has committed to two streams of voluntary disclosures, the Limited Program and the General Program for income tax purposes. The Limited Program provides relief for non-compliance where there is an “element of intentional conduct on the part of the taxpayer”. The Limited Program, where eligible, would protect the taxpayer from criminal prosecution and gross negligence penalties, but not other penalties and interest. All other disclosures would be classified under the General Program, which could protect the taxpayer from penalties and criminal prosecution, as well as partial interest relief for the years preceding the three most recent years of returns required to be filed. Full interest charges will be assessed for the three most recent years.

It should be noted that for GST/HST, excise taxes, excise duty, softwood lumber and air traveller’s security charge disclosures a third category, Wash Transactions, will exist. A wash transaction exists where a supplier would otherwise be required to collect GST/HST and would be entitled to a full input tax credit, such that net tax may not apply. Disclosure of unreported wash transactions may be eligible for a reduction in penalties and interest.

Determination of whether an application should be processed under the General or Limited Program will be made by the CRA based on the facts presented. The CRA has stated that they will



consider the dollar amounts involved, the number of years of non-compliance and the sophistication of the taxpayer.

The effective date of a disclosure (“EDD”) is the date the CRA receives a completed and signed VDP application, where the five eligibility criteria are met. The taxpayer may have up to 90 days from the EDD to submit additional information. Where complexity or extraordinary circumstances exist, an extension may be granted where a written request is received from the taxpayer or an authorized representative. If the additional information not received by the CRA within the time frame, the CRA may commence action resulting in penalties, interest, and potential prosecution.

The CRA has also indicated that the following applications will generally not be considered under the VDP:

- I. applications that relate to income tax returns with no taxes owing or with refunds expected; these would be handled using normal processing procedures.
- II. elections; there are provisions within the various acts administered by the CRA which entitle taxpayers to choose or “elect” specific treatment of certain tax transactions

- III. applications relating to an advance pricing arrangement
- IV. applications that depend on an agreement being made at the discretion of the Canadian competent authority under a provision of a tax treaty
- V. applications where a person is in receivership or has become bankrupt;
- VI. post-assessment requests for penalty and interest relief

It should be noted that once a taxpayer uses the program to become compliant, the CRA expects the taxpayer to remain compliant, such that multiple submission may not be considered. The CRA has stated that it may consider reviewing a file a second time in situations where the circumstances are beyond the taxpayer's control.

HIGHLIGHTS OF CHANGES

- Payment of estimated taxes owing required upon application.
- No-name VDP is no longer available. A non-binding, "pre-disclosure discussion" resource has been implemented, where taxpayers can receive guidance on an anonymous basis from CRA agents. While this may provide insight and answer questions related to the new program, it will not offer any protection to taxpayers.
- Corporations with gross revenue in excess of \$250 million in at least two of the last five taxation years, and any related entities, will be considered under the Limited Program.
- Complex transfer-pricing applications will be referred for a specialized committee.
- Relevant specialists will be reviewing complex applications.
- The name of the advisor who assisted with the non-compliance should be included in the application.
- Previous relief of penalties and interest could be cancelled where it is determined that a disclosure did not meet the eligibility criteria.
- Under the Limited Program, participants will have to sign a waiver of their right to object and appeal in relation to the specific issue. If a taxpayer disagrees with an assessment, a second review can be requested, however this will be at the discretion of the CRA.

WHAT NOW?

The additional complexities and limitations of the revised program may dissuade taxpayers from making future disclosures. Where possible, taxpayers may want to consider taking advantage of the current program before March 1, 2018. For more information on the current program or making a disclosure on or after March 1, 2018, please contact our office.



Jennifer Dawe CPA, CA
Senior Manager, Tax

Contact Us

Give us a call for more information about this article.

Hendry Warren LLP
881 Lady Ellen Place, Suite 200
Ottawa, ON K1Z 5L3

(613) 235-2000

Visit us on the web at

www.hwllp.ca

