



MAJOR CHANGES TO THE VOLUNTARY DISCLOSURES PROGRAM

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THE CURRENT PROGRAM

The Voluntary Disclosures Program (“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. If a VDP application is accepted by the CRA, taxpayers will have to pay the taxes owing, plus interest in part or in full. However, taxpayers would be eligible for relief from prosecution and, in some cases, from penalties that they would otherwise be subject to under the legislation. 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, or a trust.

As an example of the current program; failure to report income in two or more consecutive years can result in a flat penalty of 20% of the unreported income, even if there is no resultant income tax payable. A taxpayer who fails to report \$5 of income in one year and a \$10,000 T4 slip in the next would be subject to a \$2,000 penalty (\$10,000 of unreported income x 20%). The VDP would potentially allow the penalty to be avoided.

The application for relief must be within 10 calendar years from the end of the year in respect of which the taxpayer is seeking relief. The CRA will typically only accept a voluntary disclosure from a taxpayer once. A second disclosure will be considered if the taxpayer’s non-compliance was due to factors beyond the taxpayer’s control. A second disclosure must be a named disclosure as discussed below, and must disclose the fact that it is the second such disclosure for the taxpayer.

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.



The CRA will consider the application made under the VDP valid where the disclosure:

1. Is made voluntarily;
2. Is complete;
3. Involves the application or the potential application of a penalty; and
4. Includes information that is at least one year past due.

The CRA considers a disclosure to have been made voluntarily where the CRA has not previously taken any enforcement action such as an audit or other investigation with

respect to the specific issue being disclosed and CRA has not requested the information in writing or by phone. The taxpayer is required to provide full and accurate facts and documentation for all taxation years or reporting periods. Accordingly, the taxpayer cannot limit a disclosure to select errors or omissions or to specific taxation years.

PROPOSED CHANGES

Historically, the VDP has been quite broad in the type of event that would be acceptable under the program. The CRA has recently proposed changes to the VDP such that the instances of relief from penalties will be significantly condensed after December 31st, 2017.

The proposed changes, documented in Draft Information Circular - IC00-1R6, narrow the eligibility for VDP and impose additional conditions on applicants. The VDP will no longer be a “one size fits all” program. Major cases of non-compliance that are disclosed will not receive the same level of relief as they would through the current program. Two tracks will exist for income tax disclosures, being the General Program and the Limited Program. The first track is a General Program. If accepted under the VDP, these applications will be eligible for penalty relief and potentially partial interest relief. VDP applications that disclose “major non-compliance” will be processed under a new Limited Program which focuses on large dollar amounts, multiple years of non-compliance, and “sophisticated taxpayers” – a term not yet defined by the CRA. Further, this track will also handle disclosures made after an official CRA statement regarding its intended focus of compliance, or following CRA correspondence or campaigns, and any other circumstance in which a high degree of taxpayer culpability contributed to the failure to comply. If accepted under the Limited Program, relief will be provided only from criminal prosecution and gross-negligence penalties. All other penalties such as late-filing penalties will be applicable and no interest relief will be provided.

The new VDP program also eliminates the option of the no-names disclosure process and replaces it with a pre-disclosure discussion process that does not protect the Taxpayer if they are approached by the CRA before filing a “named” voluntary disclosure.

On June 9th, the CRA launched a 60-day online consultation with Canadians on the VDP. Now that the CRA has conducted a review, it is seeking input from the public on the proposed changes to the program to ensure that it is more responsive, innovative, and fairer for all Canadians. Feedback on the proposed changes can be directed to VDPCONSULTSG@cra-arc.gc.ca.

The tax reporting landscape in Canada is constantly evolving. Legislative changes continue to increase the complexity of income tax reporting and the risk of errors and omissions thereon. The VDP offers a mechanism for taxpayers to adhere to the self-assessment requirements and mitigate potential penalties for non-compliance. As the window narrows for the type of disclosures that will be accepted, taxpayers should consider action now, where applicable. We recommend seeking professional advice prior to proceeding with a voluntary disclosure. If you believe you may be eligible for the VDP, we recommend taking advantage of the current voluntary disclosure program. For more information, please contact our office.



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