Blaney McMurtry LLP

PUBLICATION

Changes to CRA's Voluntary Disclosure Program coming

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On March 1, 2018, a revised federal Voluntary Disclosures Program (VDP) will come into effect. The VDP provides taxpayers with an opportunity to voluntarily disclose and correct prior errors or omissions in their federal tax filings with the Canada Revenue Agency (CRA) and to obtain limited relief from the consequences that would normally follow from a failure to remit taxes owed in past taxation years. The new rules will narrow the eligibility criteria and impose additional conditions on applicants making it more difficult to benefit from the program. Changes will be introduced at the same time to disclosures relating to GST, excise taxes and duties and other federal tax legislation.

To qualify for relief under the new VDP, the application must be voluntary and complete (as determined by CRA). It must also:

- involve the application or potential application of a penalty and, for GST/HST applications, the application or potential application of a penalty or interest;
- 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
- include payment of the estimated tax owing.

One of the main changes is that under the new rules there will be two different tracks for income tax disclosures. Under the Limited program, there will be limited relief for applications that disclose non-compliance where the facts suggest there is an element of intentional conduct. Taxpayers will not be referred for criminal prosecution and will not be charged gross negligence penalties. However, they will be charged other penalties and interest if applicable. Corporations with gross revenue in excess of $250 million will only be considered under the Limited program.

In all other cases, the disclosure will proceed under the General program. In this track taxpayers will not be charged penalties and will not be referred for criminal prosecution but they will be granted partial interest relief for years preceding the three most recent years of returns required to be filed.

For both income tax and GST/HST disclosures, whether an application will be processed under the General or Limited track will be made on a case-by-case basis by CRA based on a number of factors, including the amounts involved, the length of period of non-compliance and the sophistication of the taxpayer or registrant.

Other changes of importance coming into effect on March 1, 2018 include:

- Payment of the estimated taxes owing required as a condition to qualify for the program.
- No-names disclosure is being eliminated. Taxpayers or their representatives can still have an exploratory conversation with CRA on an anonymous basis before making the disclosure.
- The name of any advisor who assisted with the non-compliance that is subject of the disclosure is to be included in the application. The exact purpose of this change remains unclear.
- Under the Limited track, taxpayers will be required to waive their right to object and appeal in relation to the issue being disclosed.

Anyone wishing to make disclosure under the current rules must get their application to CRA before February 28, 2018.

Blaney McMurtry partner Ralph Cuervo-Lorens is a recognized counsel on tax evasion and is co-author of the leading Canadian text on the subject, published by Carswell (Thomson-Reuters), the highly regarded legal publisher. Tax Evasion focuses on the management and defence of tax evasion charges at all levels. It has been cited by Canadian courts and is used by private and public tax advisors across Canada, including Canada Revenue Agency personnel.

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