

SIGNIFICANT RESTRICTIONS TO THE VOLUNTARY DISCLOSURES PROGRAM

By Ian V. MacInnis

The Voluntary Disclosures Program (VDP) is a "tax amnesty" program administered by the Canada Revenue Agency ("**CRA**"). It allows non-compliant taxpayers to voluntarily correct their tax affairs by providing relief from criminal prosecution and penalties, as well as interest payable under the *Income Tax Act* (Canada) for up to 10 years. In June, 2017, the CRA announced substantial changes to the VDP that will significantly limit the availability and usefulness of the VDP to potential applicants. The proposed changes are contained in draft Information Circular - IC00-1R6 (Voluntary Disclosures Program) which will be effective for voluntary disclosures made after December 31, 2017.

Under the current VDP, a taxpayer's disclosure will be accepted if it meets the following four (4) conditions:

- the disclosure is voluntary (i.e. disclosure is made before the CRA initiates an enforcement action or the taxpayer becomes aware of an enforcement action such as an audit, a request to file a return, or requirements issued to entities related to the taxpayer);
- the disclosure is complete (i.e. the disclosure must provide full and accurate facts and documentation for the relevant years);
- the disclosure involves a potential penalty (e.g. late filing penalty, failure to remit penalty, gross negligence penalty); and
- the information being disclosed is at least one (1) year past due.

Commencing in 2018, the new VDP will have a two-tiered system - a General Program and a Limited Program. The General Program is directed at inadvertent and minor non-compliance. The requirements for relief under the General Program are similar to those set forth above, but with some minor changes including limitation on interest relief to 50% of the applicable interest for any year in which interest relief may be available.

"Major non-compliance" (which is not defined) will disqualify taxpayers from the General Program and will fall under a new "Limited Program". If accepted, relief under the Limited Program will only be provided from criminal prosecution and gross negligence penalties. All other penalties (such as late-filing penalties) will apply and no relief from



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interest will be available.

The CRA states that the Limited Program will apply in the following situations:

- active efforts to avoid detection through the use of offshore vehicles or other means;
- large dollar amounts (although no indication has been given as to the threshold);
- multiple years of non-compliance;
- a sophisticated taxpayer;
- the disclosure is made after an official CRA statement regarding its intended focus of compliance or following CRA correspondence or campaigns; or
- other circumstances in which a high degree of taxpayer culpability contributed to the failure to comply.

The new VDP program will also eliminate the current so-called "no names" disclosure process and will replace it with an anonymous discussion process that will not protect a taxpayer if approached by the CRA before filing a "named" voluntary disclosure.

Under the proposed changes, the following situations will no longer be eligible for the VDP:

- an application to report income from the proceeds of crime;
- an application by a person in receivership or who has become bankrupt;
- an application by a corporation with gross revenue over \$250,000,000 in at least two (2) of its last five (5) taxation years;
- applications relating to transfer pricing adjustments or penalties; and
- applications that depend on an agreement being made at the discretion of the Canadian competent authority under a tax treaty provision.

The CRA also states that disclosures accepted under the Limited Program will require taxpayers to waive their objection rights in respect of taxes assessed.



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The proposed changes also introduce a new additional requirement for a valid VDP to qualify for relief. The VDP application must include payment of the estimated tax owing. A taxpayer who is unable to pay the estimated tax in full and provides evidence of their inability to do so, may, with approval of the CRA, provide security for payment of tax.

The proposed changes to the VDP can be expected to significantly reduce its availability and usefulness to non-compliant taxpayers. It can also be expected that there will be a number of taxpayers who may decide to "remain underground" rather than attempt a voluntary disclosure where the outcome is uncertain and where the relief will be limited if the disclosure falls under the new Limited Program. It would not be surprising if the changes to the VDP result in a reduced level of overall compliance and reduced tax revenue and require the CRA to dedicate additional audit resources to identify non-compliance.

As a result of the proposed changes to take effect in 2018, any taxpayer who is contemplating a voluntary disclosure should consider doing so before the end of 2017.