

## Proposed Changes to CRA's Voluntary Disclosure Program - What You Need to Know About Coming Clean with the Taxman

CRA's Voluntary Disclosure Program (VDP) is a program which allows taxpayers to voluntarily come forward and correct previous tax filing errors/omissions.

Examples where VDP relief may currently be granted include (but are not limited to):

- Failure to report all of your taxable income;
- Claiming ineligible expenses on a tax return;
- Failure to remit source deductions for employees;
- Failure to report an amount of GST/GST;
- Failure to file information returns (such as Form T1135 – Foreign Income Verification Statement); and
- Failure to report foreign sourced income that is taxable in Canada

Currently, the VDP is generally available to all taxpayers regardless of the reasons for the non-compliance so long as the four conditions for a valid disclosure have been met:

1. Voluntary – i.e. it has not been initiated as a result of a proposed audit or investigation of the taxpayer or a person associated with, or related to the taxpayer (including but not limited to corporations, shareholders, spouses and partners)
2. Complete – the taxpayer must provide full and accurate facts and documentation for all taxation years where there was previously inaccurate, incomplete or unreported information (i.e. you cannot be selective about what you are disclosing!)
3. Penalty – there must be a penalty that could be applied to the item at issue (ex. late filing penalty, failure to remit penalty, omission penalty, gross negligence penalty, etc.)
4. One Year Past Due – the disclosure must include information that is at least one year overdue

Taxpayers who make a valid disclosure under the VDP will still have to pay the taxes owing in connection with the corrected filings (together with arrears interest subject to partial relief in certain circumstances); however if they are granted relief any penalties and/or criminal prosecution that would otherwise apply will be waived.

On June 9, 2017 CRA released [Draft Information Circular - IC00-1R6 – Voluntary Disclosures Program](#) – for discussion purposes only. The proposed new rules would be effective for voluntary disclosures made **after December 31, 2017**.

The proposed changes to the VDP follows reports from the House of Commons Standing Committee on Finance (October 2016) and the Offshore Compliance Advisory Committee (December 2016) recommending CRA conduct a comprehensive review of the VDP and implement changes to tighten the criteria to be accepted into the program.

## Key Proposed Changes

### ***Elimination Of The “No-Names” Disclosure Option***

- Effective for January 1, 2018 all disclosures must be made on a **named basis**
  - Currently disclosures under the existing VDP can be made on a “named” or a “no-named” basis
  - Taxpayers who are unsure they want to proceed with a disclosure can commence the process on a “no-names” basis in order to provide insight into the VDP process and gain a better understanding of the risks involved and potential relief available under the VDP - CRA can review preliminary information and advise on the possible tax implications of the disclosure
  - Ultimately a “no-names” disclosure requires the identity of the taxpayer to be revealed in order for the CRA to process the VDP request and make a final decision on the disclosure
- In place of the “no-names” disclosure option CRA will offer “pre-disclosure” discussions
  - These will be anonymous, informal discussions with CRA officials designed only to provide information
  - The process is **non-binding on CRA** and **does not constitute acceptance into the VDP**

### ***Addition Of A New Condition For A Valid Disclosure: Pre-Payment Of Tax***

- In addition to the 4 existing criteria noted above (voluntary, complete, penalty and one year overdue), taxpayers will be required to either pay (or post security for) the amount of taxes they estimate to be outstanding at the time the disclosure is made
  - NOTE: there is no mention of pre-payment for estimated interest nor potential penalties so the pre-payment is likely required for the tax portion only
- The existing VDP program requires payment of tax only after CRA has issued assessment/reassessment notices in connection with the processing of the disclosure (which can take months from the initial disclosure date)

### ***Introduction Of Two Tracks For Disclosures – A “General Program” And A “Limited Program”***

#### **General Program**

- This program is directed at inadvertent and minor non-compliance matters
- If accepted under the General Program, the disclosing taxpayer will be eligible for full penalty relief and partial interest relief; additionally they will not be referred for criminal prosecution (as with the old VDP)

#### **Limited Program**

- “Major non-compliance” matters will disqualify taxpayers from the General Program
- Draft IC00-1R6 indicates that major non-compliance includes:
  - Active efforts to avoid detection through the use of offshore vehicles or other means;
  - Large dollar amounts;
  - 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; and
  - Any other circumstance in which a high degree of taxpayer culpability contributed to the failure to comply

- The interpretation of these various conditions and how they will be applied by CRA remains largely unclear. For example, no threshold amount has been provided by CRA to understand what constitutes “large”; nor any criteria listed to determine what is meant by “sophisticated taxpayer”
- IC00-1R6 uses the example of a taxpayer who has transferred undeclared business income earned in Canada to an offshore bank account since 2010 as a “major non-compliance” for which the Limited Program would apply
  - If accepted under the Limited Program, the disclosing taxpayer will be eligible for relief from criminal prosecution and gross negligence penalties only → there is no relief for other penalties and no relief of interest

#### **New Circumstances When VDP Relief Will Not Be Considered**

- IC100-1R6 includes five additional circumstances in which VDP relief will not be considered:
  - Reporting income from 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 million in at least two of its last five taxation years;
  - Applications relating to transfer pricing adjustments or penalties;
  - Applications that depend on an agreement being made at the discretion of the Canadian competent authority under a tax treaty provision

#### **New Information Required On The Initial Disclosure**

- Proof of pre-payment of the estimated taxes owing;
  - CRA may approve a taxpayer posting security for the payment in situations where a taxpayer is unable to pay the estimated tax in full
- Identification of any advisor who provided assistance to the taxpayer in respect of the subject matter of the VDP application; and
- Whether the disclosure relates to foreign source income
  - NOTE: this may in turn trigger classification into the “Limited Program”

#### **Final Thoughts**

As this is still a “Draft Policy” further amendments may still be possible before the effective date of January 1, 2018; however, if published in its current form IC00-1R6 would drastically alter the existing scope and parameters of CRA’s voluntary disclosure program thereby reducing the benefits for taxpayers considering voluntary disclosures.

Post-December 31, 2017 the VDP program will be largely viewed as punitive with the mindset of this once generous amnesty program now being punishment vs. compliance.

Our belief is that the VDP will no longer be widely-utilized if IC00-1R6 is implemented. With the Limited Program restricting access to the relief once enjoyed by all, taxpayers will no longer have a practical venue to correct past errors or omissions which may well lead to **less disclosures** and, correspondingly, a **reduced level of overall compliance**. This in turn will lead to **lower revenues** derived from the VDP program efforts as taxpayers will be discouraged from coming forward under the VDP. CRA will be forced to dedicate additional audit resources in order to identify these non-compliances that previously would have been voluntarily disclosed.

**SPEAK WITH YOUR ADVISOR AT INNOVO LLP**

➔ **Do you have concerns that prior year's filings included errors or omissions?**

**The time is NOW to contact your advisor at Innovo to discuss – let's ensure your situation can be considered under the existing Voluntary Disclosure Program before the proposed changes come into effect!**



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