Cassels

CRA Announces Proposed Changes to the Voluntary Disclosure Program

Tera Li Parizeau

June 29, 2017

In June 2017, the Canada Revenue Agency (CRA) released its proposed changes to the voluntary disclosure program (VDP) (the Proposed VDP) relating to income tax, excise tax, GST/HST and excise duties (Taxes). The VDP provides taxpayers an opportunity to make an application to correct inaccurate or incomplete information, or to disclose information not previously reported. If a taxpayer makes a valid disclosure under the current VDP, the taxpayer would be entitled to penalty relief and partial interest relief, provided the taxpayer pays all Taxes that are due under the relevant legislation. The Minister of National Revenue is expected to announce the formal changes to the VDP in the fall of 2017, and any such changes to be effective on January 1, 2018.

The VDP is a very important program for taxpayers who have been non-compliant in tax matters in prior years by encouraging such taxpayers to voluntarily come forward and rectify such non-compliance without penalty and prosecution, and in most cases, partial interest relief.

The most significant change in the Proposed VDP is the introduction of a two track system: 1) the General Program and 2) the Limited Program (both of which are discussed below). The Limited Program seeks to limit the availability of the program in certain circumstances or where there is a “major non-compliance” as such relief for penalty and partial interest relief could be seen as “overly generous.”

General Program

Under the General Program, the taxpayers whose applications are accepted will not be charged penalties or referred for criminal prosecution with respect to the disclosure, and may be entitled to partial relief for any interest in respect of assessments preceding the three most recent years of returns required to be filed. For example, if the most recent tax return required to be file was for the 2016 taxation year, partial interest relief may only be available for taxation years prior to 2014. Consequently, full interest will be assessed for the three most recent years of returns required to be filed.

Limited Program

Applications that disclose “major non-compliance” will be processed under the Limited Program and if accepted, will not receive the same level of relief as they would under the current VDP.

Under the Limited Program, the taxpayer will not be referred for criminal prosecution and will not be charged a gross negligence penalty with respect to the disclosure. However, other penalties will be charged as applicable such as a late filing penalty, a failure to remit penalty, an instalment penalty or an omission penalty. If the application is accepted as valid under the Limited Program, no interest relief will be provided.

Generally, under the Limited Program, situations that would constitute “major non-compliance” are as follows:

- 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 determination of whether an application should be processed under the Limited Program will be made on a case by case basis.

Other Proposed Measures

Below is a list of other proposed measures to the program:

- require the payment of the estimated taxes owing as a condition of qualifying for the program
- exclude applications that involve transfer pricing and applications from corporations with gross revenue in excess of $250 million from VDP relief
- exclude applications that disclose income from the proceeds of crime from VDP relief
- change the way the amount of interest relief available is calculated and
- cancel VDP relief if it is subsequently discovered that a taxpayer’s VDP application was not complete due to a misrepresentation attributable to wilful default.

For Further Information

It is important that a taxpayer who has been non-compliant in respect of Taxes to consider an application under the VDP as soon as possible and certainly before the proposed changes take into effect.

We would be very pleased to provide any assistance with respect to the VDP. For further information, please do not hesitate to contact Tera Li or any other member of the Taxation Group.

Cassels

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.