Compliance Deficiency? Make a Voluntary Disclosure Now

May 11, 2017
No. 2017-26

Most personal income tax returns for 2016 have now been filed and corporations with a December 31, 2016 year-end are already preparing to file their tax returns. If you discover unintentional filing deficiencies or an outstanding tax liability when filing your return that may subject you to a penalty, you may want to consider making a voluntary disclosure now before expected changes to the program are announced later this year.

The CRA’s Voluntary Disclosures Program (VDP) is an extremely useful tool to correct prior compliance matters. The VDP allows taxpayers to make disclosures to correct inaccurate or incomplete information or to disclose information not previously reported. If you are accepted into the VDP, you still have to pay any taxes owing, but the CRA may waive penalties and reduce interest payments.

The CRA is currently reviewing the VDP, and has acknowledged that it will consider recent recommendations made by the government’s Offshore Compliance Advisory Committee (OCAC) to restrict relief in certain circumstances. As a result, if you are considering voluntary disclosures for unintentional omissions in a prior return (including for indirect tax), you should enter into the program before changes are announced to ensure some certainty as to how your disclosure will be treated. The CRA has indicated it will communicate any official changes to the program in late 2017.

Background
The Offshore Compliance Advisory Committee was established by the CRA in April 2016 to provide independent advice on administrative strategies to deal with offshore
compliance. The committee’s recommendations will inform the CRA on the scope of the VDP. The CRA said it will communicate any changes in late 2017.

The CRA’s Voluntary Disclosure Program seeks to promote tax compliance by offering taxpayers relief from certain penalties and partial relief from interest otherwise assessable to a taxpayer who voluntarily discloses and corrects previous omissions or deficiencies in tax reporting.

To qualify for this relief, your disclosure must be complete, it must include information that is at least one year past due, and it must involve a penalty (if no penalty is involved, the CRA will simply process the new information as it would any other request for adjustment). Additionally, you must come forward before the CRA has started an audit, investigation, or other enforcement action.

If you are unsure as to whether you want to make a voluntary disclosure, you or your representative can submit the facts of your situation to a CRA voluntary disclosures officer on a no-name basis.

Voluntary disclosures may also be made regarding deficiencies in meeting other tax requirements, such as source deduction remittance and GST/HST reporting and payment obligations.

**OCAC recommendations**

Although the CRA is not bound by the OCAC report, its recommendations may provide some insight into which areas of the VDP the CRA will modify when it announces changes later this year.

**Restricted relief**

Specifically, the OCAC report advises the CRA to consider providing less relief from interest and penalties in certain cases. Specifically, the report recommends that the CRA could increase the period for which full interest must be paid or deny relief from civil penalties in situations where taxpayers:

- Exhibit deliberate or wilful default or carelessness amounting to gross negligence
- Make active efforts to avoid detection, including through offshore vehicles
- Avoid large amounts of tax
- Are non-compliant for multiple years
- Repeatedly use the Voluntary Disclosures Program
- Are considered to be a "sophisticated taxpayer"
- Make a disclosure only after they are motivated by CRA statements regarding its intended focus of compliance or by broad-based CRA correspondence or campaigns
- Undertake or continue avoidance transactions after implementation of the Common Reporting Standard
- Exhibit a high degree of taxpayer culpability that contributes to the failure to comply.

**Foreign income information returns**

The report says that taxpayers who have not filed form T1135, "Foreign Income Verification Statement" but still reported and paid appropriate tax on their income should not have to access the VDP for these unfiled forms. Instead, the report recommends that the CRA examine the returns of taxpayers who have not filed form T1135 to verify they have properly reported their income. Taxpayers who have reported their income could be given relief for failure to file the form, while non-compliant taxpayers could be subject to taxes and penalties.

**Sign-offs**

The report says that the CRA should consider requiring higher-level internal approval for VDP settlements involving substantial amounts of evaded taxes, complex arrangements, new issues of law or high-profile cases. Currently, the CRA approves these settlements at the team-leader level.

**Objections to voluntary disclosure agreements**

In the report, the OCAC recommends that, once the CRA offers a voluntary disclosure agreement, taxpayers should no longer be able to object to these agreements. However, the report allows that taxpayers should not have to give up their rights to object to other issues in their tax returns or to contest whether any adjustments arising from the voluntary disclosure have been properly made.

**Other recommendations**

The report also recommends that the VDP should:
- Disallow relief for certain related-party transfer-pricing issues
- Ensure that large or complex files are reviewed by CRA personnel with expert knowledge before they are accepted into the VDP
- Treat offshore and onshore (domestic) non-compliance similarly (except where reduced relief from interest and penalties applies)
• Emphasize more strongly that taxpayers can normally only use the VDP once and verify taxpayers’ past participation

• Emphasize that taxpayers must pay tax and interest (or provide adequate security) within 90 days of the effective date of disclosure, except for extraordinary circumstances

• Clarify that the CRA will make a reasonable accommodation for taxpayers unable to provide the CRA with full and complete information about the subject matter of the disclosure

• Require any person making a voluntary disclosure to disclose the identity of any advisers who assisted with non-compliance.

We can help

Your KPMG adviser can help you determine whether a voluntary disclosure makes sense in your circumstances. In addition, we can help you prepare for forthcoming changes to the Voluntary Disclosure Program. For more details on initiating a voluntary disclosure, contact your KPMG adviser.

kpmg.ca