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Changes to the Voluntary Disclosures Program Effective March 1, 2018

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On March 1, 2018, a revised Voluntary Disclosures Program (“VDP”) run by the Canada Revenue Agency (“CRA”) will come into effect that will narrow the eligibility criteria and impose additional conditions on applicants.

The VDP seeks to promote compliance with Canadian tax laws by providing an avenue for taxpayers to disclose information not previously reported or correct inaccurate or incomplete information. Currently, the VDP does not distinguish applicants based on the type, scale, or geographic location of the non-compliance.

As of March 1, 2018, two tracks will be created for income tax disclosures:

- 1. Limited Program:** The Limited Program will provide limited relief where the facts suggest there is an element of intentional conduct on the part of the taxpayer or a closely related party. Taxpayers will not be referred for prosecution and will not be charged gross negligence penalties, but will be charged other penalties and interest as applicable.
- 2. General Program:** In other cases, the General Program should apply. Taxpayers will not be charged penalties or referred for prosecution. Partial interest relief will also be granted for the years preceding the three most recent years of returns required to be filed.

To determine whether an application should proceed under the General or Limited Program, the CRA will consider a number of factors, including, but not limited to: whether efforts were made to avoid detection through use of offshore vehicles or other means; the dollar amounts involved; the number of years of non-compliance; and the sophistication of the taxpayer.

Currently, the VDP is available to a taxpayer if four (4) conditions are met:

- 1.** The disclosure is voluntary;
- 2.** The disclosure is complete;
- 3.** The disclosure involves the application or potential application of a penalty; and
- 4.** The information being disclosed is at least one year past due (information less than one year past due may be included if the disclosure also includes information that is one year past due).

Under the revised VDP, CRA will also require payment of the estimated taxes owing in order to qualify for the program. If the taxpayer cannot make the payment when filing the application, they may request to be considered for a payment arrangement.

Other significant changes to the VDP to take effect March 1, 2018 include:



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- No-name disclosures replaced by pre-disclosure discussion service: Currently, taxpayers can apply on a no-name basis, and if the application meets the conditions of valid disclosure, the taxpayer is granted protection from penalties and prosecution from the date the CRA receives the application, provided the taxpayer's identity is disclosed within 90 days. No-name disclosures will be eliminated and be replaced by the "pre-disclosure discussion" service, where taxpayers or their authorized representatives can discuss the fact scenario on an anonymous basis; however, those discussions do not constitute acceptance into the VDP.
- Identifying advisors: The name of the advisor who assisted with the non-compliance should generally be included in the application.
- Cancellation of previous relief: CRA will cancel relief if it is subsequently discovered that a taxpayer's application was not complete due to a misrepresentation.
- Waiver of rights of objection and appeal: Under the Limited Program, taxpayers will have to sign a waiver of their right to object and appeal regarding the specific issue disclosed.

Taxpayers can still qualify for VDP relief under the less restrictive eligibility criteria and conditions; however, the CRA must receive the taxpayer's application, including their name, on or before February 28, 2018.

Alanna Mar is a tax lawyer in the Business Law Group at Perley-Robertson, Hill & McDougall. Alanna's tax law experience involves all levels of tax dispute resolution work. She has experience drafting opinion letters, notices of objection, notices of appeal, notices of motion and offers to settle related to the tax dispute resolution and tax litigation practice. She has performed legal research and drafted memoranda on income tax, GST/HST and planning issues.

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