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## **Proposed Restrictions to the Voluntary Disclosures Program**

*By Alanna Mar, Tax Law Lawyer*

On June 9, 2017, Canada's Minister of National Revenue (the "Minister") announced a 60-day consultation period regarding proposed changes to the Voluntary Disclosures Program ("VDP") run by the Canada Revenue Agency ("CRA"). The proposed changes outlined in CRA's [draft Information Circular IC00-1R6](#) ("IC00-1R6") are the result of a December 2016 report on the VDP by the Offshore Compliance Advisory Committee (the "Committee"). IC00-1R6 proposes various changes that would restrict the availability of the VDP.

### **The Current VDP**

The VDP seeks to promote compliance with Canadian tax laws by granting relief from penalties and prosecution, and partial relief from interest, to a taxpayer who voluntarily discloses information not previously reported to CRA or corrects inaccurate or incomplete information. Currently, the VDP is available to a taxpayer if four (4) conditions are met:

1. The disclosure is voluntary (CRA has not initiated enforcement action, such as an audit, a request to file a return, etc.);
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).

The current VDP does not distinguish applicants based on the type, scale, or geographic location of the non-compliance.

### **Proposed Changes to Income Tax Disclosures**

IC00-1R6 applies to disclosures relating to income tax. A separate [draft GST/HST memorandum](#) applies to other types of disclosures. Some of the key proposed changes to the VDP in IC00-1R6 include:

- Less generous relief in some cases: IC00-1R6 proposes two tracks to the VDP: a General Program and a Limited Program. Under the General Program, applications would be eligible for penalty relief and partial interest relief. Applications that disclose "major non-compliance" would proceed under the Limited Program, which would eliminate only gross negligence penalties. No interest relief would be provided under the Limited Program. Situations of "major non-compliance" would include active efforts to avoid detection through offshore structures, large dollar amounts, multiple years of non-compliance, a "sophisticated taxpayer" (undefined in IC00-1R6), disclosure after an official CRA



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statement regarding the intended focus of compliance, and any other circumstances in which a high degree of taxpayer culpability contributed to the non-compliance.

- Payment of interest and tax: The Committee recommended that taxpayers should be required to pay the estimated tax and interest payable or provide security within 90 days of the effective date of disclosure, except in extraordinary circumstances. This would be a new condition in addition to the four conditions of the current VDP.
- Identifying advisors: The Committee recommended that taxpayers should be required to identify the advisor who assisted with the subject matter of the disclosure in order to provide CRA with valuable information on those who may be liable to civil penalties or criminal prosecution. IC00-1R6 proposes that the name of the advisor should generally be included in the application.
- Limited objection rights: IC00-1R6 proposes to require a taxpayer to waive their right to object in relation to the matter involved in a disclosure and any related assessment of taxes under the Limited Program. The taxpayer would still be able to object to calculation errors, characterization issues (such as income versus capital gain treatment), or issues other than the matter disclosed in the application.

CRA is accepting input on the proposed changes until August 8, 2017, and will announce formal changes to the VDP in the fall of 2017.

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