

March 2017

CRA may propose radical changes to the Voluntary Disclosure Program

In April 2016, the Minister of National Revenue established the Offshore Compliance Advisory Committee (“OCAC”) for the purpose of advising the Minister and the Canada Revenue Agency (“CRA”) on administrative strategies to deal with offshore compliance. In the fall of 2016, OCAC issued a report on CRA’s Voluntary Disclosure Program, which was endorsed by the Minister of National Revenue on December 8, 2016. On February 22, 2017, the CRA released its formal response, in which it indicated that the review of the recommendations prepared by OCAC will be completed by March 31, 2017.

In its report, OCAC makes numerous recommendations that, if implemented, will radically alter the Voluntary Disclosure Program, generally reducing the value of such disclosures and increasing taxpayers’ compliance costs. OCAC recommends reducing the value of relief available to a taxpayer in certain circumstances, in which a high degree of taxpayer culpability contributed to the failure to comply. Factors such as sophistication of the taxpayer, the dollar amount of tax owing, the length of non-compliance and efforts taken to avoid detection may all be considered when determining the quantum of relief granted. Assuming this recommendation is accepted, a significant increase is likely in the amount of interest and penalties applied to taxpayers in certain circumstances where currently penalties are waived and interest is reduced.

OCAC also recommends that, as part of the acceptance of the voluntary disclosure, a taxpayer be required to pay the estimated tax and interest or provide adequate security within 90 days of filing the disclosure. The current acceptance procedure does not require the taxpayer to pay any such amounts on filing and not doing so does not preclude the acceptance of the disclosure.

A further recommendation is to preclude the taxpayer from accessing relief under voluntary disclosure more than once. The current policy permits the taxpayer to make a second submission only “if the circumstances surrounding the second disclosure are beyond the taxpayer’s control.”

Finally, the committee also recommends that where a taxpayer makes a voluntary disclosure submission and they are assessed

or reassessed on account thereof, they should renounce their right to object. Historically, taxpayers have been allowed to file a notice of objection for an assessment/reassessment on account of a voluntary disclosure submission.

It is unclear the extent to which any of OCAC’s recommendations will be implemented. However, taxpayers considering making a voluntary disclosure should be mindful of the timing. With the March 31, 2017 commitment by CRA, it is conceivable that implementation of some or all of the recommendations could be immediate once their review is complete. While grandfathering rules may apply to taxpayers who have formally initiated a voluntary disclosure process with CRA before the implementation date, there is no guarantee.

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