

Canada Revenue Agency's Voluntary Disclosure Program ("VDP") and upcoming changes to this program

Penalties and Interest

There are two types of common sanctions with regard to late filed income tax returns and late or insufficient payment of income taxes owing:

1. Failure to file penalties. - If a taxpayer files a return late, a penalty applies. The penalty is 5% of the unpaid tax that is due on the filing deadline, plus 1% of any unpaid tax for each complete month that the return is late, up to a maximum of 12 months.
2. Interest - If a taxpayer has a balance owing, CRA charges compound daily interest starting May 1, on any unpaid amounts owing for the previous year. The rate of interest is at CRA's prescribed rate (currently 5%).

Penalties and interest on late filed HST returns and late or insufficient HST remittances are similar to the above although the calculation method varies slightly.

Late filed tax returns and late or partial payment of taxes owing can result in a serious financial liability if the condition is allowed to persist.

The Canada Revenue Agency's Voluntary Disclosure Program ("VDP")

The Canada Revenue Agency's Voluntary Disclosure Program (VDP) provides taxpayers the potential to realize some dispensation from late filing penalties and the potential to realize partial relief from interest charges, by correcting previous instances of "non-compliance", including non-disclosure (such as failure to file a tax return) and non-payment.

Taxpayers can make disclosures under the VDP if they did not file a tax return. Taxpayers may also correct inaccurate or incomplete information, or disclose information not previously reported. For example, such as if taxpayers did not meet their tax obligations, if they claimed ineligible expenses, failed to remit source deductions, or failed report or remit the GST/HST.

The VDP applies to disclosures for income tax, excise tax, excise duties, source deductions and GST/HST.

Principles of the VDP

The purpose of the VDP is to promote compliance with Canada's tax laws by encouraging taxpayers to voluntarily come forward and correct previous omissions or errors in their dealings with the Canada Revenue Agency ("CRA"). Taxpayers who make a valid disclosure that is accepted will have to pay the taxes or charges plus applicable interest, without penalty or prosecution that the taxpayer would otherwise be subject to.

Relief Provided Under the VDP

Penalty Relief - If the CRA accepts a disclosure, the taxpayer will not be charged penalties or prosecuted based on the information in the disclosure .

Interest Relief - In addition to penalty relief, if a disclosure is accepted by the CRA, the Minister MAY grant partial relief of interest charges against a taxpayer for assessments for years or reporting periods preceding the three most recent years of tax returns required to be filed.

CRA does not have to grant relief under the VDP provisions. Each request is reviewed and decided on its own merit. If relief is denied or partly granted, the CRA will provide the taxpayer with an explanation of the reasons and factors for the decision.

Circumstances Under Which VDP Relief May be Granted

Relief from penalty and prosecution may be considered if a taxpayer:

- failed to fulfill his or her obligations under the applicable act,
- failed to report any taxable income they received,
- claimed ineligible expenses on a tax return,
- failed to remit source deductions of their employees,
- failed to report an amount of GST/HST, (which may include undisclosed liabilities or improperly claimed refunds or rebates, etc.),
- failed to file information returns, and
- failed to report foreign sourced income that is taxable in Canada.

Disclosure Methods

- “Named” Disclosure Method - A “named” disclosure is a disclosure in which the identification of the taxpayer is stated on the initial disclosure submission.
- “No-Name” Disclosure - Taxpayers who are unsure they want to proceed with a disclosure are given an opportunity to participate in preliminary discussions about their situation on a “no-name” basis.

A disclosure under the Voluntary Disclosure Program must be made to CRA using the appropriate forms.

Conditions of a Valid Disclosure

A disclosure must meet the following four conditions in order to qualify:

- i) Voluntary - A disclosure will not qualify as a valid disclosure if the CRA determines the taxpayer was aware of, or had knowledge of an audit, investigation or other enforcement action set to be conducted by the CRA with respect to the information being disclosed to the CRA, or on a person associated with, or related to the taxpayer, or if the enforcement action is likely to have uncovered the information being disclosed.
- ii) Complete - The taxpayer must provide full and accurate facts and documentation for all taxation years or reporting periods where there was previously inaccurate, incomplete or unreported.
- iii) A disclosure must involve the application, or potential application of a penalty. The penalty type may be a late filing penalty, a failure to remit penalty, an instalment penalty, or a discretionary penalty, such as an omission penalty or a gross negligence penalty.
- iv) One Year Past Due - The disclosure must include information that is: (i) at least one year past due, or (ii) generally less than one year past due where the disclosure is to correct a previously filed return.

Authorization of a Taxpayer’s Representative

A disclosure to CRA’s Voluntary Disclosure Program may be made on a “no names” basis using a competent authorized representative, such as Chartered Professional Accountant.

Proposed Changes to the Voluntary Disclosure Program (VDP)

In response to criticism that the current VDP is overly generous, suggested revisions to the program are scheduled to take place on January 1 of 2018 and would involve:

- implementation of two “tracks” of the program - the “General Program” and the “Limited Program.” If a taxpayer is accepted under the General Program, the taxpayer will be eligible for full penalty relief and partial interest relief. The Limited Program would only offer for reduced relief from penalties
- the Limited Program would involve less generous relief in cases of major non-compliance. A VDP accepted under the Limited Program will offer no interest relief
- there would be no relief for corporations with revenues over \$250 million and applications that involve transfer pricing matters
- taxpayer objection rights will be limited
- the estimated tax owing will have to be paid at the time of the application, rather than later
- the name of any advisor who facilitated the taxpayer with regard to the non-compliance will have to be disclosed
- the revised program would appear to eliminate the “no names” disclosure option.

The changes to the Voluntary Disclosure Program are expected to be finalized in the fall of 2017.

The forgoing is only a summary of the pertinent Income Tax Information Circulars. For the definitive guidance, readers should consult Income Tax Information Circular IC00-1R5. The terms of the revised program are presented in Draft Information Circular IC00-1R6.

For additional information on the Canada Revenue Agency’s Voluntary Disclosure Program (“VDP”) contact Bay Street Accounting and Tax Services, phone: 416-929-1707, email : baystservices@rogers.com.