

The Canada Revenue Agency's (CRA's), Voluntary Disclosure Program (VDP) is designed to encourage taxpayers to disclose deficiencies in complying with reporting, filing, payment and remittance obligations under the Income Tax Act as well as the Excise Tax Act and the Custom Act. Normally, failure to comply with these requirements can lead to interest charges, penalties as well as potential criminal sanctions. However, if the delinquent taxpayer voluntarily "comes clean", the CRA can and will waive penalties and prosecution if the taxpayer pays all taxes and interest owing. This article provides a brief outline of the deficiencies covered, the conditions for a valid Voluntary Disclosure as well as the process involved.

Examples of deficiencies that can be disclosed under the Voluntary Disclosure Program

Here are some examples of deficiencies that can be disclosed under the program to avoid penalties:

- Failure to report income.
- Failure to remit source deductions.
- Failure to file tax returns and other reporting documents.
- Claiming ineligible expenses.

Conditions for a valid Voluntary Disclosure

There are four conditions:

1. The disclosure must be voluntary.

A disclosure must be truly voluntary. This means that the taxpayer has to initiate the disclosure. A disclosure may not qualify as voluntary if it is made at a time when the person might expect that the CRA will, or may, discover the deficiency in any event, for example, if an audit has already commenced or the taxpayer has knowledge that an audit will commence and CRA will discover the omission. This may also be the case if another revenue authority or governmental organization (such as a provincial tax auditor) with which CRA has

an information exchange agreement has commenced a review of the issue.

2. The disclosure must be complete.

As part of the VDP, the taxpayer must make a full and accurate reporting of all previously inaccurate, incomplete and unreported information. All required forms must be prepared and properly filed. The taxpayer also must comply with all legitimate requests for documents to verify the disclosure. Minor errors or omissions will not disqualify the disclosure, but if it turns out that the disclosure contains material errors or omissions, the disclosure will not qualify as a voluntary disclosure, and the disclosed information will be processed and penalties and prosecution can be applied to the entire amount.

3. The disclosure must involve a penalty.

The disclosure must involve at least one penalty. If no penalties apply to the information being disclosed, there is no need to seek penalty relief through the program. Thus, mistakes which give rise to increased taxes but not penalties cannot be covered under the program.

4. The disclosure must include information that is; (a) at least one year past due or, (b) if less than one year past due, is not being disclosed solely to avoid the late filing or installment penalties.

The intent is that a taxpayer cannot use the program to disclose a current year income tax return simply to avoid paying the late-filing penalty.

How to make a Voluntary Disclosure

A taxpayer who wishes to make a voluntary disclosure should contact the CRA, provide details of the disclosure and show that the four conditions have been met. The identity of anyone making a voluntary disclosure will be protected. A taxpayer who is unsure if they want to make a voluntary disclosure may discuss their situation on a no-name basis with CRA. A taxpayer can therefore engage a tax lawyer or accountant to present the facts in the case, without providing the taxpayer's name.

This allows the taxpayer to determine whether CRA will accept the disclosure as voluntary. If the taxpayer cannot come to an acceptable settlement with CRA, the file can be closed on a no-name basis.

(Note: for voluntary disclosures involving substantial amounts, a lawyer may be preferable to an accountant, as the latter does not have client privilege and may be forced to disclose information in court.)

If CRA accepts that a disclosure is voluntary, it expects full payment of the total amount due (including interest) to be made upon acceptance of the disclosure. However, if the amount involved is large, arrangements can often be made for unpaid amounts to be spread over a period of time.

In Quebec

The Voluntary Disclosure policy in Quebec is very similar to that of CRA's. Information can be found on the Revenu Québec website.

This article is for information purposes only and should not be construed as offering tax advice. Individuals should consult with a qualified tax advisor before taking any action based upon the information in this article.

Last revised: January 28, 2010

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