

Taxes

Kathryn Edwards



Voluntary Disclosure: CCRA is Helping Taxpayers to "Come Clean"

Canada Customs and Revenue Agency (CCRA) have various programs to help taxpayers comply with tax legislation. These programs can be useful if you have had the uncomfortable experience of having clients tell you about transactions not reported on a previous tax return, that incorrect reported information remains uncorrected, or that they failed to file tax returns altogether, although taxes would have been payable.

Your clients' uncertainty about how to handle these situations may have led them to inactivity—and many sleepless nights!

CCRA's "Voluntary Disclosure" program is one way you can help your clients get that good night's rest. This article is intended to guide you in providing that service.

What is Voluntary Disclosure?

Provided for in the *Income Tax Act*, *Excise Tax Act*, *Customs Act*, and *Customs Tariff*, the Voluntary Disclosure program (VDP) is a necessary feature of Canada's tax system. As with any tax system based on a system of self-assessment, i.e., the "honour system," failures, errors, and omissions can occur. CCRA has designed this program to encourage compliance among taxpayers by providing the opportunity to correct any inaccuracies or omissions in their past dealings with CCRA, without the risk of penalty or prosecution. Persons

making an eligible voluntary disclosure only will have to pay the taxes owing—which would have been payable in the first place, had the information been properly disclosed—and interest.

Your clients' uncertainty about how to handle these situations may have led them to inactivity—and many sleepless nights!

Can Anyone Make a Voluntary Disclosure?

Certain conditions must be met to qualify for VDP. They are briefly summarized below.

- The disclosure must be **voluntary**. If the taxpayer has already received a request to file by CCRA or if an investigation, audit, or other enforcement action has commenced, the taxpayer will generally not qualify. If a request to file was received some years ago with no more current follow-up by CCRA, the taxpayer *may* qualify. *Current* enforcement action by CCRA is the key word.
- The disclosure must be **complete and accurate**. While in some cases, absolute accuracy and completeness

may not be possible, CCRA may require sufficient supporting information to gain comfort as to the completeness/accuracy of the claim. CCRA will determine whether a disclosure is complete according to the terms of the disclosure originally presented to the client by CCRA.

The disclosure **involves a penalty**.

- If you are unsure whether a penalty applies, contact your tax advisor, or call CCRA.
- If no penalties apply to the information being disclosed, the client does not need to seek penalty relief through the VDP.

The disclosure **must include information that is:**

1. at least one year past due; or
2. if less than one year past due, it is not initiated simply to avoid the late-filing installment penalties.

The VDP is not intended to allow taxpayers to avoid their legal obligations under the Acts administered by CCRA. For example, a taxpayer cannot use the program simply to avoid paying a late-filing penalty.

Taking the Right Steps

A claim under the VDP must be made using the right steps. If your submission does not go through the right channels,

you may find yourself facing an unintended result—the very penalties you were hoping to avoid! Therefore, to ensure you are on the right track, it is strongly suggested you consult with a tax professional before taking any of the following steps.

1. Contact the Voluntary Disclosure section of CCRA.

This should be done on a “no names” basis, while the terms of the disclosure are discussed, and while you determine if your client wishes to complete the disclosure at this time. Note: this can often be a process of *negotiation*. A final submission must be filed within a period of time specified by CCRA, usually 90 days from the date of the initial submission.

2. Be prepared and organized.

Each disclosure should include enough information to verify the facts. Books of account, records, documents, and any other supporting information should be available upon request.

3. Be prepared to pay the total amount owing.

In some cases, it may be possible to make arrangements to pay; a 6 percent penalty, however, could be applied to amounts remaining unpaid after notification by CCRA.

The VDP can be a process of negotiation. As such, it is strongly suggested that you consult your tax professional before proceeding with any action.

In addition, if you are considering a Voluntary Disclosure, do not delay. If, while you are considering your course of action, CCRA commences some action on the matters of concern, then you or your client may become disqualified from making any claim at all! ▲

Kathryn Edwards, CA, is a partner with Pagnanini Edwards Lam, Chartered Accountants.

Voice: 604 299-9274
kathy@accountantsplus.ca