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Application

¶ 1. This information circular cancels and replaces Information Circular 00-1R, *Voluntary Disclosures Program*, dated September 30, 2002.

¶ 2. In this information circular, the term “taxpayer” includes an individual, an employer, a corporation, a partnership, a trust, a Goods and Services Tax/Harmonized Sales Tax (GST/HST) registrant/claimant or a registered exporter of softwood lumber products.

¶ 3. Unless otherwise specified, all legislative references in this information circular refer to the *Income Tax Act* (ITA), the *Excise Tax Act* (ETA), the *Excise Act, 2001* (EA, 2001), the *Air Travellers Security Charge Act* (ATSCA), or the *Softwood Lumber Products Export Charge Act, 2006* (SLPECA), and any other acts administered by the Canada Revenue Agency (CRA).

Introduction

¶ 4. The purpose of this information circular is to provide information about the CRA’s *Voluntary Disclosures Program* (VDP). Taxpayers can make disclosures to correct inaccurate or incomplete information, or to disclose information not previously reported. For example, taxpayers may not have met their tax obligations if they claimed ineligible expenses, failed to remit source deductions or the GST/HST, or did not file an information return.

¶ 5. This information circular provides information on the discretionary authority of the *Minister of National Revenue* (Minister) under the ITA, the ETA, the EA, 2001, as well as the ATSCA and the SLPECA to grant relief to taxpayers in accordance with specific legislative provisions. It also explains how a taxpayer may make a disclosure, including the proper information and documentation needed to support such a disclosure. In addition, it outlines the administrative guidelines the CRA will follow in making a decision whether to accept the disclosure as valid.

¶ 6. The VDP applies to disclosures for income tax, excise tax, excise duties under the EA, 2001, source deductions, GST/HST, as well as charges under the ATSCA and SLPECA.

¶ 7. The information provided on the VDP process is only a guideline, is not intended to be exhaustive, and is not meant to restrict the spirit or intent of the legislation.

Principles of the VDP

¶ 8. The VDP promotes compliance with Canada’s tax laws by encouraging taxpayers to voluntarily come forward and correct previous omissions in their dealings with the CRA. Taxpayers who make a valid disclosure will have to pay the taxes or charges plus interest, without penalty or prosecution that the taxpayer would otherwise be subject to under the acts noted above.

¶ 9. The VDP is not intended to serve as a vehicle for taxpayers to intentionally avoid their legal obligations under the acts administered by the CRA.

Legislation

¶ 10. The CRA has the legislative authority to provide relief for valid disclosures in accordance with the following legislative provisions:

- subsection 220(3.1) of the ITA,
- section 88 and section 281.1 of the ETA,
- section 173 and section 255.1 of the EA, 2001,
- section 30 and section 55 of the ATSCA, and
- section 37 of the SLPECA.

Relief Provided Under the VDP

Penalty Relief

¶ 11. If the CRA accepts a disclosure as having met the conditions set out in this policy, it will be considered a valid disclosure and the taxpayer will not be charged penalties or prosecuted with respect to the disclosure.

Interest Relief

¶ 12. In addition to penalty relief, if a disclosure is accepted as valid by the CRA, the Minister may grant partial relief in the application of interest against a taxpayer in respect of assessments for years or reporting periods preceding the three most recent years of returns required to be filed.

Limitation Period on Discretion for Relief of Penalties and Interest

¶ 13. For income tax submissions made on or after January 1, 2005, the Minister's ability to grant relief is limited to any taxation year (or fiscal period in the case of a partnership) that ended within the previous 10 years before the calendar year in which the submission is filed. For example: in an income tax submission made on May 1, 2007, the limitation would apply so that relief would only be available for the 1997 and subsequent taxation years.

¶ 14. Unless a submission was filed before the 10-year limitation rule coming into effect on January 1, 2005, submissions filed for the 1985 to 1994 tax years will not be accepted.

¶ 15. For GST/HST, excise tax and the SLPECA, the limitation pertains to submissions made on or after April 1, 2007 and is for reporting periods that ended within the previous 10-year period. Similarly, for duties under the EA, 2001, the limitation applies to submissions made on or after April 1, 2007 and is for fiscal months that ended within the previous 10-year period.

¶ 16. For submissions under the ATSCA, the Minister may, on or before the day that is ten calendar years after the end of

the fiscal month of a person, waive or reduce interest, or waive or cancel penalties, payable by the person.

¶ 17. The Minister does not have to grant relief under the VDP provisions. Each request will be 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

¶ 18. Relief from penalty and prosecution, as provided for under the VDP, may be considered if a taxpayer:

- failed to fulfill their 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, unpaid tax or net tax from a previous reporting period),
- failed to file information returns, and
- failed to report foreign sourced income that is taxable in Canada.

Circumstances Under Which VDP Relief Will Not be Considered

¶ 19. The following, lists examples of circumstances that would not be considered under the VDP policy:

- income tax returns with *no taxes owing* or with *refunds expected*; these would be handled using normal processing procedures.
- “elections”; there are provisions within the various acts administered by the CRA which entitle taxpayers to choose or “elect” specific treatment of certain tax transactions, e.g. section 216 returns under the ITA.
- “advance pricing arrangement”; this is an agreement between the Minister of National Revenue and a taxpayer that covers certain tax transactions between the taxpayer and a non-resident entity. The agreement confirms an appropriate transfer pricing methodology, in advance, and its application to specific transactions for a specified time frame using certain terms and conditions. See IC 94-4, *International Transfer Pricing: Advance Pricing Arrangements (APAs)* for further information.
- “rollover provisions”; as election provisions, these allow a taxpayer to defer income amounts that would otherwise arise on the transfer of property to a taxable Canadian corporation. See IC 76-19, *Transfer of Property to a Corporation Under Section 85* for further information.
- “bankruptcy returns”; these returns are required to be filed by the taxpayer in the year of bankruptcy.

- post-assessment requests for penalty and interest relief: these requests will be considered as retroactive tax planning.

¶ 20. If the VDP is not applicable to a taxpayer's particular tax situation, relief may be requested in accordance with the taxpayer relief provisions as described in *IC 07-1, Taxpayer Relief Provisions*.

¶ 21. For information on requesting relief from penalty and interest with respect to GST/HST see GST/HST Memorandum G500-3-2-1, *Cancellation or Waiver of Penalties and Interest*. Each of the above-referenced documents is available from any Tax Services Office (TSO) and from the CRA website at www.cra-arc.gc.ca.

Disclosure Methods

¶ 22. Disclosures may be submitted to a TSO using either of the two methods described below (Named or No-Name). Each method includes the same consideration and review of all relevant information, however it is the timing of the identification of the taxpayer that differs in these two methods.

¶ 23. A submission must be made in writing, and may be mailed or faxed to the TSO that has jurisdiction over the area where the taxpayer resides. For businesses, this would be based on their operating address. Information as described in paragraphs ¶ 43 to ¶ 45 must be included in the submission. See also "Where to Make a Disclosure".

¶ 24. There may be circumstances where the taxpayer cannot immediately submit all of the information or documentation for the disclosure. In these circumstances the CRA may allow the taxpayer a period of time to submit such information in order to complete the disclosure submission. Normally this period of time is no more than 90 days from the effective date of disclosure (EDD) (paragraphs ¶ 50 to ¶ 54).

"Named" Disclosure Method

¶ 25. A "named" disclosure is a disclosure in which the identification of the taxpayer is stated on the initial disclosure submission.

"No-Name" Disclosure Method

¶ 26. 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. These discussions with a VDP officer are informal, non-binding, and general in nature and are done before the identity of the taxpayer is revealed. They are for the benefit of the taxpayer and are intended to provide insight into the VDP process, a better understanding of the risks involved in remaining non-compliant, and the relief available under the VDP.

¶ 27. Based on the preliminary information provided by the taxpayer as described in paragraph ¶ 44, the VDP officer may confirm that there is nothing set out in the information provided that may immediately disqualify the taxpayer from further consideration under the VDP. If all the required information for a complete disclosure, except for the identity of the taxpayer, has been submitted, the CRA can also review, upon request, this preliminary information and advise, without prejudice, on the possible tax implications of the disclosure. This advice is based on the facts as submitted on a no-name basis. If there is any discrepancy between the information that is provided and the information that is verified once the taxpayer is identified, this preliminary advice may be invalidated.

¶ 28. The CRA can undertake to provide a final and determinative decision on a no-name disclosure only after the identity of the taxpayer is known and all facts of the disclosure, in respect to the four validity conditions (paragraphs ¶ 31 to ¶ 42), have been verified. In these circumstances, the identity of the taxpayer must be provided within 90 days of the EDD (paragraphs ¶ 50 to 54). There will be no extensions to the timeframe for providing the identity of the taxpayer.

¶ 29. In the event a taxpayer had previously put forward a no-name disclosure, a subsequent no-name disclosure for the same information and taxpayer, will not be considered. In order for the taxpayer to then make use of the VDP, they must identify themselves.

¶ 30. The taxpayer may decide not to proceed with the no-name disclosure. They would then, however, remain at risk of the CRA finding the omission and assessing the applicable tax or charge, penalty and interest, in addition to possible criminal investigation and prosecution.

Conditions of a Valid Disclosure

¶ 31. A disclosure must meet the following four conditions in order to qualify as a valid disclosure:

i) Voluntary

¶ 32. A disclosure will not qualify as a valid disclosure, subject to the exceptions in paragraph 34, under the "voluntary" condition 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 or any other authority or administration, with respect to the information being disclosed to the CRA, **or**
- enforcement action relating to the disclosure was initiated by the CRA or any other authority or administration on the taxpayer, or on a person associated with, or related to the taxpayer (this includes, but is not restricted to, corporations, shareholders, spouses and partners), or on a third party, where the purpose and impact of the

enforcement action against the third party is sufficiently related to the present disclosure, **and**

- the enforcement action is likely to have uncovered the information being disclosed.

¶ 33. For purposes of the VDP, an “enforcement action” may include, but is not limited to:

- requests, demands or requirements issued by the CRA, relating to unfiled returns, unremitted taxes/ instalments, deductions required at source or non-registrants; (although the aforementioned actions may only pertain to one specific year or reporting period, the procedure will be considered to be an enforcement action, for purposes of the VDP, for all taxation years or reporting periods).
- For example: a taxpayer has not complied with their filing requirement for the 2002 through 2005 taxation years. Upon determining that the taxpayer was required to file tax returns, the CRA issued a “request-to-file” (Form TX11). The CRA request, requiring the taxpayer to file the 2003 tax return, is mailed to the taxpayer on July 20, 2006. On August 15, 2006, the taxpayer makes a disclosure and submits all of the tax returns (2002-2005), correctly prepared with all supporting documentation, etc. The CRA request-to-file is an enforcement action relating to all unfiled returns for that taxpayer. Although the request-to-file was for the 2003 taxation year, the disclosure would be denied because the taxpayer did not voluntarily come forward to file the other returns before the CRA undertook enforcement action;
- requests, demands or requirements which have been issued with reference to other tax accounts of the taxpayer, partners of the taxpayer or corporations associated with or related to the taxpayer;
- direct contact by a CRA employee for any reason relating to non-compliance (e.g. unfiled returns, audit, collection issues); and/or
- an audit, investigation or other enforcement action by another authority or administration, such as, but not limited to, a police force, securities commission or provincial authority.

¶ 34. Not all CRA initiated enforcement action may be cause for a disclosure to be denied by the CRA. Examples of this include:

- a recent audit of a taxpayer was related to a source deductions (payroll) issue. The same taxpayer is submitting a disclosure for an amount of GST/HST, which was collected but not remitted to the CRA as required. There may be no correlation between these two taxation issues and as such, the enforcement action on the payroll account may not be cause to deny the GST/HST disclosure, or
- a large corporation may be under CRA audit but the information being disclosed is not part of the audit protocol.

ii) Complete

¶ 35. 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 information relating to any and all tax accounts with which the taxpayer is associated. While the disclosure is being evaluated by the CRA, the VDP officer may request additional specific documentation in order to verify certain details such as revenue amounts being disclosed, tax credits being applied for, or expenses being claimed. The taxpayer must comply with such requests within the stipulated timeframes (see paragraphs ¶ 50 to ¶ 54), and provide sufficient detail to allow all of the facts of the case to be verified. Additional information on requirements for maintaining books and records can be found in the current version of IC 78-10, *Books and Records Retention/ Destruction*, for Income Tax, and for GST/HST, in GST/HST Memorandum 15-1, *General Requirements for Books and Records* (Revised June 2005), for Excise Duties, in Excise Duties Memorandum 9.1.1, *General Requirements for Books and Records*, and for Excise Taxes, in Excise Taxes and Special Levies Memorandum X6-1 - *Books and Records*.

¶ 36. Due to the nature of a particular disclosure, referrals to other programs within the CRA may be considered necessary in order to fully analyze the disclosure.

¶ 37. While the information provided in a disclosure must be complete, the disclosure may not be disqualified simply because it contains minor errors or omissions. Each submission will be reviewed on its own merits.

iii) Penalty

¶ 38. 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. In the event a penalty does not apply, the taxpayer cannot seek relief through the VDP. However, the disclosed information should still be submitted and it will be handled through the CRA’s normal processing procedures.

iv) One Year Past Due

¶ 39. The disclosure must include information that is:

- at least one year past due, or
- less than one year past due where the disclosure is to correct a previously filed return or where the disclosure contains information that also meets the condition of subparagraph (i) above.

¶ 40. For example, a taxpayer had not filed tax returns for the years 2000 to 2004. On November 10, 2005, the taxpayer submitted all of the tax returns requesting they be considered under the VDP. Although the 2004 tax return is less than one year past due (filing deadline of April 30, 2005) the CRA will consider the 2004 return as part of this disclosure, provided that all other conditions have been met.

¶ 41. In contrast, the 2004 tax return would not be considered for VDP treatment if it were the only return being filed. In that case, the 2004 return would be handled through the CRA's normal processing procedures.

¶ 42. The intent of sub-paragraph 39(ii) noted above, is to allow the timely correction of previously filed returns and to allow the inclusion of unfiled returns (less than one year past due) only when they are part of a disclosure submission that includes information or unfiled returns that meet the condition in sub-paragraph ¶ 39(i).

Making a Disclosure – Information/Documentation Required

¶ 43. Taxpayers must send in a written submission to make a disclosure. Form RC199, *Taxpayer Agreement* should be used to initiate the disclosure. A copy of this form is available on the CRA's website at: www.cra-arc.gc.ca. Failure to use Form RC199 or to provide similar information as per Form RC199, may delay the review of the disclosure.

¶ 44. In order to support a disclosure submission, the following information pertaining to the taxpayer's situation must be submitted:

- the name, address, telephone number, social insurance number, partnership number, trust account number, business number, license number, GST/HST registration number or any other identification tax number assigned by the CRA to the taxpayer,
 - if a no-name disclosure, this information would not be required;
- the taxpayer's postal code,
 - if a no-name disclosure, only include the first three characters of the taxpayer's postal code (used to determine the TSO that will be responsible for the file);
- the address of the taxpayer's authorized representative, including telephone and fax numbers (if applicable);
- gender and age (if an individual and involves a no-name disclosure);
- the taxation year(s), reporting period(s) or fiscal period(s) involved in the disclosure;
- amount of the disclosure (where applicable);
- type of return(s) involved: personal T1, GST/HST, corporate T2, trust T3, etc.;
- type of information return(s) and/or slip(s) involved (e.g. T3, T4, T1134, T1135) (if applicable);
- type of omission (business income, unremitted GST/HST, investment income, pension income, capital gain, etc.);
- reason for the omission;
- primary business activity, and
- an explanation of how the taxpayer considers that each of the four validity conditions (paragraphs ¶ 31 to ¶ 42) have been met.

¶ 45. Each disclosure submission must include enough detail to allow for verification of the facts. Taxpayers and/or their authorized representatives are expected to make all documents, records, and books of account, as well as any other required information, available upon request.

A Second Disclosure by the Same Taxpayer

¶ 46. Taxpayers are expected to remain compliant after using the VDP. Under normal circumstances, a taxpayer is entitled to utilize the benefits of the VDP only one time. A second disclosure for the same taxpayer may be considered by the CRA if the circumstances surrounding the second disclosure are beyond the taxpayer's control. At the time of making a second disclosure, a taxpayer must provide their name and specify that they had previously made a disclosure. If it is discovered during the course of the disclosure review that the taxpayer had previously made a disclosure and the taxpayer has not disclosed this fact, the CRA may deem the disclosure to be invalid for VDP purposes. If the second disclosure is for the same issue that was previously denied as incomplete due to information not being received by the stipulated date, then the second disclosure will be denied.

Authorization of a Taxpayer's Representative

¶ 47. The taxpayer's authorized representative can make the disclosure. The taxpayer must grant proper authorization to the representative by submitting a signed copy of the appropriate authorization form.

- For individuals (income tax matters), submit form T1013, *Authorizing or Cancelling a Representative*.
- For all business entities (all business program accounts), submit form RC59, *Business Consent Form*.
- For matters pertaining to Canada Pension Plan or Employment Insurance disclosures, submit form CPT139, *CPP/EI - Authorizing or Cancelling a Representative*.

¶ 48. The CRA cannot discuss any confidential information with a representative prior to receiving the appropriate authorization.

¶ 49. When a taxpayer's authorized representative makes a disclosure, the written authorization should be attached to that submission. In the case of a no-name disclosure, the authorization should be presented at the same time the identification of the taxpayer is provided.

The Effective Date of a Disclosure (EDD)

¶ 50. The EDD is the earlier of:

- the date the CRA receives a completed and signed form RC199, *Taxpayer Agreement*, or
- the date a letter, signed by the taxpayer or the taxpayer's authorized representative and containing similar information (see paragraphs ¶ 43 to ¶ 45) to Form RC199, is received by the CRA.

¶ 51. From this date, provided that the disclosure meets the four validity conditions, the taxpayer is granted protection against penalties and possible prosecution, regarding the amounts included in the disclosure.

¶ 52. If necessary, the taxpayer may have up to 90 days from the EDD for the submission of additional relevant information and/or documentation that may be required to complete the disclosure.

¶ 53. If this time frame is not sufficient due to the complexity of the disclosure or other extraordinary circumstances, the Assistant Director, Enforcement Division of the TSO, may authorize an extension of this period, upon receipt of a written request from the taxpayer. The additional information must be provided within the stipulated time frame. However, an extension will not be granted to the 90-day time frame to provide the taxpayer's identity under the no-name disclosure method.

¶ 54. If the additional information and/or documentation is not received within the stipulated time frame:

- in the case of a named disclosure, the CRA may commence enforcement action wherein penalties and interest are applicable and prosecution may be initiated, or
- in the case of a no-name disclosure, the file will be closed. The taxpayer could then be subject to full penalties, interest and possible prosecution.

Where to Make a Disclosure

¶ 55. The detailed disclosure submission should be forwarded to the Assistant Director, Enforcement Division of the TSO that has jurisdiction over the area where the taxpayer resides. For businesses, this would be based on their operating address. To locate your TSO, please click on the following link, TSO, or consult the CRA website at: www.cra-arc.gc.ca. Under limited circumstances, a taxpayer may request to transfer a disclosure to another TSO. This type of request must be adequately justified in writing, and the decision on where the disclosure is reviewed will be at the discretion of the CRA.

Denial of a Disclosure Submission

¶ 56. If it is determined, after the VDP officer has completed evaluating the disclosure submission, that any of the four validity conditions have not been met; the taxpayer would then be advised in writing that:

- the disclosure is being denied,
- the disclosed information may be referred to another CRA program area,
- the disclosed information may result in an assessment or reassessment,
- penalties and interest may be levied, and
- in certain circumstances, an investigation and prosecution may be initiated.

Right of Redress for the Taxpayer

Second Administrative Review

¶ 57. There is no right of objection under the Acts mentioned in paragraph 3 of this information circular, for a taxpayer to dispute a discretionary decision that denied relief, or allowed only partial relief. However, if the taxpayer believes that the Minister has not exercised discretion in a fair and reasonable manner, the taxpayer may request in writing, that the Director of the TSO where the original decision was issued, review and reconsider the original decision. The taxpayer has the opportunity at that time to make additional representations for the CRA to consider. The CRA will not consider a request for a second review if a disclosure was denied because the information was not previously submitted within the stipulated time frame.

¶ 58. The Director may designate a delegated authority, not involved in the previous review and decision, to carry out the second administrative review on their behalf.

Judicial Review

¶ 59. Where a taxpayer does not believe the Minister exercised discretion in a fair and reasonable manner, the taxpayer may make an application to the Federal Court for a judicial review of the Minister's discretionary decision, pursuant to section 18.1 of the *Federal Courts Act*, within 30 days from the date the notification of the decision was communicated to the taxpayer.

¶ 60. To request a judicial review, the taxpayer must send a completed Form 301, *Notice of Application*, with the appropriate filing fee, to the registrar of the Federal Court. For more information on how to file an application for judicial review or other general enquiries, contact the Courts Administration Service at 613-992-4238, or access their website at www.cas-satj.gc.ca.

¶ 61. If the Federal Court is of the view that the Minister's discretion was not properly exercised, the Court will generally not substitute the Minister's decision but rather, will refer the request back to the CRA for reconsideration.

¶ 62. As a general rule, taxpayers should request a second administrative review from the CRA before filing an application for a judicial review with the Federal Court.

Notice of Objection

¶ 63. In the event the taxpayer's disclosure resulted in an assessment or reassessment to which the taxpayer disagrees, the taxpayer is entitled to file a Notice of Objection to the assessment or reassessment. The Notice should be addressed to the Chief of Appeals in the taxpayer's TSO.

Need More Information

¶ 64. For more information on the *Voluntary Disclosures Program*, or for contacting the TSOs, please click on the links, or consult the CRA website at: www.cra-arc.gc.ca.

Comments

¶ 65. If you have any comments about this information circular, please write to us at:
Enforcement and Disclosures Directorate
Canada Revenue Agency
Ottawa ON K1A 0L5