

Changes to the Voluntary Disclosure Program

Author : admin

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Changes to the Voluntary Disclosure Program

The [Report](#) of the Offshore Compliance Advisory Committee

The Minister of National Revenue has welcomed the Recommendations of the Offshore Compliance Advisory Committee's ("OCAC") Report that would affect the operation and outcomes of the Voluntary Disclosure Program (VPD). A brief summary [HERE](#).

The proposed changes are a good step in the right direction, but some changes and fine tuning are needed to ensure that the objectives of the program are met within the changing business and regulatory environments.

NOTE see also the Parliament of Canada Committee report "Monitoring, Detection and Prosecuting Aggressive Tax Planning in Canada" [Here](#). Current VPD [Policy](#) including [IC00-1R4](#) and [RC199](#).

[GUIDE to and Summary of the Current Program](#)

The recommendations in this report are a small step in the right direction, including one that aims to reduce the direct and indirect benefits and advantages conferred on high-income and sophisticated taxpayers, the playing field with ordinary taxpayers who strive pay their fair share of taxes. The tax system (and the underlying legal rules comprising the economic system) has a long way to go before it meets equity and fairness goals.

There have been some concerns from the tax professional community that the changes may reduce VDP applications. It is likely that these concerns are, at least in part, due to the professional (planning) community's concern that they will be liable to larger damage claims by clients where aggressive, improper, or successful planning results in additional tax liability with no recourse to the VDP to reduce interest and penalties.

The OCAC was established on April 11, 2016, as part of a \$444.4 million expenditure to strengthen tax compliance and combat tax evasion. The 7 member committee was well-selected to combine the skills, knowledge, and experience needed to produce meaningful and incremental recommendations.

Details of (some of) the Recommendations

Not all of the proposed changes are covered below. See the full report for a complete list of recommendations.

Reduced Generosity of the Program

The OCAC recommended that the VDP benefits be less generous in certain, targeted instances, including when:

- A sophisticated taxpayer is making the application;
- A significant amount of tax is at issue and/or multiple tax years are at issue;
- The taxpayer took active steps to avoid detection, including the use of off-shore entities;
- The disclosure was one that involves an avoidance transaction continued or undertaken after the implementation of the Common Reporting Standard;
- The disclosure involves conduct that was deliberate, a result of willful default, or carelessness amounting to gross negligence;
- The disclosure is dubiously voluntary as a result of CRA statements of focuses compliance work or CRA correspondence or campaigns; or
- The disclosure otherwise involves taxpayer conduct that is highly culpable in contributing to the failure to comply.

The proposed reduction in generosity suggested is the increase in the period for which full interest must be paid and/or denying penalty relief. The protection against criminal prosecution remains.

The recommendation aims predominantly at high-income taxpayers who through the use of professional advice or self-help means have shifted the tax burden onto the shoulders of Canadian taxpayer's less able (or unable) to similarly shed social responsibilities.

A taxpayer who deliberately takes steps to achieve an improper or failed outcome should either seek relief from the advisors or accept the cost of a failed attempt - Canadian taxpayers should not insure such taxpayers and their advisors by providing an out that, once the time value of money and the benefits of improper deferral are taken into account, leave that taxpayer in too much better a financial position. Some reward for coming forward (truly voluntarily) is proper to reflect the cost savings to society in detecting, investigating, and pursuing the non-compliance.

Limitation for Repeat Users

The program may be limited in that those having filed a successful VPD will be barred from a second attempt. This may require some fine tuning, for example to restrict the limitation to circumstances where the subject matter of the new VD should or could have been included in the previous with proper diligence or effort (perhaps similar to a fresh evidence standard on appeal). However, given that the program is meant to allow persons to fully come clean and then remain compliant, repeat use of the VPD is properly restricted.

Limitation where Transfer Pricing is at Issue

The program would not be available to multinational enterprises where the relief involves

transfer pricing (related party pricing issues).

The misuse of transfer pricing rules and the opportunities at base erosion and profit shifting only available to multi-national enterprises result in shifting the tax burden onto Canadian resident individuals and domestic businesses. This allows multinational enterprises to benefit from Canadian infrastructure, laws, and society without contributing their fair share of taxes and allows them to unfairly compete against domestic businesses.

Despite the outcry of multinational enterprises and their advisors, it is possible to structure their affairs to reduce the possibility of accidentally being caught in a transfer price misprice. The changes could permit a VD in limited circumstances where the determination of a transfer price is, by nature of the product or service, highly speculative or uncertain. These situations will be limited.

Need to Disclose Advisors

The program would require those making an application to disclose the identity of their tax advisors whose work contributed to the non-compliance.

Although many professionals claim that this is improper and blurs the lines between proper planning that is tax avoidance and improper actions that are illegal tax evasion, the reason for resistance is two-fold. First, professionals would have to be more diligent and less aggressive in their tax planning schemes because they would now face greater liability and insurance costs where their failures are not mitigated by the VPD. Second, professionals would face greater risk when they design mass schemes to reduce the Canadian tax base, as the disclosure by one taxpayer would result in the disclosure of other participants' non-compliance. Both would reduce revenues and increase costs and risk. Given solicitor-client privilege, this change would mostly put planning by accountants at risk and require greater involvement by lawyers (shifting income and profits to lawyers from accountants).

Given solicitor-client privilege, this change would mostly put planning by accountants at risk and require greater involvement by lawyers (shifting income and profits to lawyers from accountants). However, Parliament could also capture lawyers in its net by expressly limiting solicitor-client privilege in appropriate circumstances.

It is quite proper to have private businesses bear the full cost and risk of their activities. Tax planners and advisors should not be able to externalize risk and cost, having compliant taxpayers and Canadian society provide a financial buffer. This change would also increase the efficiency of Canada's self-reporting and self-assessment system and protect Canadian taxpayers.

This change would also increase the efficiency of Canada's self-reporting and self-assessment system and protect Canadian taxpayers against fraud by unscrupulous advisors (e.g. Fiscal Arbitrators and the like).

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