

THE VOLUNTARY DISCLOSURES PROGRAMS IN CANADA (AND QUÉBEC)

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How much will a Voluntary Disclosure (VD) cost?

- Approximate cost (includes both tax and interest):
 - Federal (Canada): generally between 5 and 15% of account balance (if no withdrawals and/or substantial deposits)
 - Provincial (Québec): between 12.5 to 25% of account balance (if no withdrawals and/or substantial deposits)

Total VD cost combined: between 18 to 40% of account balance*

** Could vary depending on income generated, currency, exchange rate, composition of investments, withdrawals and deposits, whether client can explain origins of capital as non taxable (ex. pre-immigration to Canada), evidence available, etc.*

What is the Voluntary Disclosures Program?

- The Voluntary Disclosures Program (“VDP”) encourages taxpayers to come forward to the tax authorities and correct inaccurate or incomplete information and/or disclose information that was not previously reported on their tax returns.
- In exchange for the voluntary disclosure (VD) of such information, the tax authorities grant the taxpayer partial relief from interests, penalties and criminal charges that could have otherwise applied.

Taxpayers should act as soon as possible

- Canada has signed the OECD's *Multilateral Competent Authority Agreement* on June 2nd, 2015
- Pursuant to the provisions of this Agreement, Canada and the other signatory countries will automatically and mutually exchange financial information regarding their residents starting in 2018 (2017 for some countries);
- Other signatory countries include, *inter alia*: Switzerland, Liechtenstein, Isle of Man, Guernsey, Barbados, the British Virgin Islands and the Cayman Islands.

Possible consequences if one does not act

- Liable for unpaid taxes relating to any unreported income (statute-barred years will be opened);
- Potentially liable for the following penalties:
 - \$2,500/year for failure to file T-1135 forms, or \$12,000/year, or 5% of the account balance/year;
 - 50% penalty for gross negligence on tax saved by non-reporting;
- Potential criminal charges that could result in fines and/or imprisonment;
- Interest accrues on any amount owing to the government (*i.e.* tax and penalties);

Relief granted if unreported income is disclosed through the VDP

The tax authorities will generally agree to:

- Reduce interest rates applicable to statute-barred years;
- Waive penalties; and
- Not pursue criminal charges against the taxpayer.

Protection under the VDP is generally granted from the date that a VD application is received by the tax authorities

Criteria to qualify to the VDP

- Voluntary :
 - Taxpayer is not being audited and has not been contacted by the tax authorities regarding an upcoming audit.
- Complete/Verifiable :
 - Taxpayer is in a position to provide all supporting financial documentation and information to the tax authorities (generally 10 years of bank statements);
 - Taxpayer discloses the totality of unreported income.
- Involves the potential application of at least one penalty;
- Contains information that is at least one year past due; and
- The taxpayer has not filed a VD application earlier.

Calculation of taxes owing under a VD application – Federal (Canada Revenue Agency “CRA”)

- CRA will review (and tax) the income realized during all years for which financial documentation is available;
- As a general rule, CRA requires that taxpayers minimally disclose the financial information relating to the past 10 taxation years if available;
- CRA will reassess the taxpayer on any income earned during the years for which the documentation is available;
- CRA will accept to reduce the interest rate by 4% for statute-barred years (up to 10 years);
- CRA will waive penalties.

Calculation of taxes owing under a VD application – Federal (Continued)

- If information is available beyond 10 years, possibility of imposition of taxes, penalties and interest unless agreement reached when VD is opened on an anonymous basis.

Calculation of taxes owing under a VD application – Provincial (Revenu Québec)

- Taxpayer is deemed to have disposed of the entirety of the assets disclosed through the VDP on December 31st of the seventh year preceding the VD application (ex. If VD made after May 1 2015, presumed to dispose of all assets divulged on Dec. 31, 2008);
- Taxpayer is taxed on this deemed disposition unless he/she is able to prove that opening capital should be tax-exempt;
- Net income realized in years following the deemed disposition (*i.e.* past 6 years) is subject to tax (ex. 2009 to 2014, plus current year will have to be reported);
- Revenu Québec will generally waive interest for statute-barred years;
- Revenu Québec will generally waive penalties;

“No-name” Voluntary Disclosure Application

- A taxpayer may apply for the VDP on a “no-name” basis;
- Even though the VD application is made on a “no-name” basis, taxpayer will need to disclose the first three digits of his/her zip code;
- In any event, taxpayer will need to disclose his/her personal information (*i.e.* full name, address and SIN) at the latest 90 days after the acceptance of the VD application by the tax authorities. Therefore, taxpayer should have all available financial information on hand before filing a VD application.

Additional information

- Canada Revenue Agency, Information Circular IC00-1R4, “*Voluntary Disclosures Program*” (March 21, 2014) : <http://www.cra-arc.gc.ca/E/pub/tp/ic00-1r4/ic00-1r4-e.pdf>
- Agence du revenu du Québec, Bulletin d’information IN-309, «La divulgation volontaire ou comment régulariser votre situation fiscale » (Octobre 2015) : [http://www.revenuquebec.ca/documents/fr/publications/in/in-309\(2015-10\).pdf](http://www.revenuquebec.ca/documents/fr/publications/in/in-309(2015-10).pdf)

Legal fees to do a VD

- Basic VD: could be as low as \$25,000
- Depends on facts/complexity of file
- Hourly rate or fixed amount
- Possibility to pay at the end of the VDP process

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