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August 8, 2017

The Honourable Diane Lebouthillier, PC, MP
Minister of National Revenue
555 MacKenzie Avenue, 7th Floor
Ottawa, ON
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Dear Ms. Lebouthillier:

Re: Proposed Changes to Voluntary Disclosures Program

Our firm, Rotfleisch & Samulovitch Professional Corporation, is a tax law firm based in Toronto with a national tax practice. The firm has been operating for over twenty-five years and has established a high level of expertise in Canadian tax law, including in-depth understanding and familiarity with many of Canada Revenue Agency's discretionary programs, and in particular the Voluntary Disclosures Program ("VDP"). The firm has in fact been involved in VDP submissions for over 25 years and was an early promoter of the program to the public and as a result has submitted numerous VDP applications over the year.

This comment letter is in response to the June 9, 2017 announcement by CRA of draft proposed changes to the VDP, which invited comments and recommendations from Canadians and industry stakeholders on the proposed changes. Due to our firm's long-standing history with the VDP, we feel we are uniquely qualified to comment on the proposed changes contained in draft *Information Circular- IC00-1R6- Voluntary Disclosures Program* ("IC00-1R6"). Although we will only briefly discuss draft *GST/HST Memorandum 16.5- Voluntary Disclosures Program*, all of our comments on IC00-1R6 are applicable to that draft information circular as well.

Our Firm's Experience with the Current VDP Regime

Our firm submits at least one voluntary disclosure to CRA every week and handles all aspects of voluntary disclosures on a daily basis, including educating prospective clients about the VDP and corresponding with VDP officers on specific files. Whenever a client approaches our firm with an example of past non-compliance, our advice is invariably to submit either a named or no-name voluntary disclosure to CRA. From our point of view, this is often the best strategy for the client. The current rules in place for the VDP do such an excellent job in providing strong incentives for clients to "come clean" with CRA, that there is very often little to no downside to coming forward through the VDP. In this way, our firm has always understood that the

underlying principle of the currently in place VDP regime is to encourage taxpayers to come forward to report past non-compliance with the *Income Tax Act* or *Excise Tax Act*, regardless of the type, magnitude or length of non-compliance. When a taxpayer comes forward under the current VDP regime, CRA obtains up-to-date and accurate tax information for the individual and payment of the taxes owing plus applicable interest, with little to no compliance costs for CRA. A successful voluntary disclosure represents a "free" audit for CRA with payment of taxes owing inevitably following. When the disclosure request is submitted by our firm specifically, the CRA can also always rest assured that the client's tax affairs have been subjected to extremely through review by both lawyers and the independent CPAs with whom we work to prepare the filings. The VDP, until the present day, represents "found money" for the CRA.

It is important to note that even with the current regime that is extremely low risk for clients, some 5-10% of the clients who have an initial consultation with us about submitting a VDP application decide not to proceed. Reasons include an unwillingness to pay the tax, which is probably the second most common and a psychological inability to deal with tax issues which is probably, surprisingly, the most common, and one of the reasons why we believe the program in its current form has been so successful.

In our firm's view, the proposed changes in IC00-1R6 signal not only a fundamental shift in the aims of the VDP, but also introduce uncertainty into what is a workable framework, both of which will ultimately *discourage* individual taxpayers and corporations alike from coming forward to report and correct past non-compliance. The following are some example of changes of proposed changes in IC00-1R6 that our tax law firm feels will deeply undermine the effectiveness of the VDP:

- The division of the VDP into the general and limited programs, of which the latter does not provide any interest relief and only provides protection from gross negligence penalties and criminal prosecution;
- Substantially all of paragraph 20 of IC00-1R6, specifically the fact that disclosures involving large dollar amounts, multiple years of non-compliance or those made subsequent to an official CRA statement that declares an intended focus or campaign are not eligible for relief under the general program;
- Paragraph 21 of IC00-1R6, which states that corporations with gross revenue in excess of $250 million in at least two of its last five taxation years are not eligible for relief under the VDP;
- Paragraph 26 of IC00-1R6, which adds payment of estimated taxes owing as a condition of a valid disclosure under the VDP; and
- Paragraphs 48 of IC00-1R6, which defines the "effective date of disclosure" as the date CRA "receives a completed and signed Form RC199, Voluntary Disclosures Program (VDP) Taxpayer Agreement".

When our firm compares the advice we have given to clients on previous files, in which we unequivocally advised clients to come forward through the VDP, to the advice we would give to those same clients in light of the proposed changes to the VDP, our advice would likely differ and in many cases our firm would not be steadfast in encouraging clients to come forward through the VDP – there is simply too great a risk given the uncertainty that these changes are

apt to create. Our advice in many of these cases is likely to be that the client may well be better off with ongoing non-compliance and with accepting the low percentage audit risk.

The Division of the VDP into the General and Limited Programs

Instead of one standard for relief under the VDP for all potential instances of non-compliance, IC00-1R6 provides that the availability of penalty and interest relief will depend on whether the information being disclosed by a given taxpayer makes them eligible for relief under the "general program" or the "limited program". Relief under the general program appears to closely resemble that of the current VDP rules in place, although a review of paragraph 15 of IC00-1R6 suggests that there is the potential for interest relief to be curtailed slightly under the proposed changes. Otherwise, the general program offers complete penalty relief.

Relief under the limited program, which is ostensibly aimed at situations involving major non-compliance, is, as the name implies, extremely limited. There would be no interest relief available under the limited program, and penalty relief would be available only to the extent that CRA would be precluded from levying gross negligence penalties and/or pursuing criminal prosecution. Normal failure to file penalties under subsection 162(1) of the *Income Tax Act* (the "Act"), which top out at 17% of taxes owing, would presumably still be assessed under the limited program. In addition, IC00-1R6 is completely mum on repeated failure to file penalties under subsection 162(2) of the Act and repeated failure to report income penalties under subsection 163(1) of the act, each of which can equal as much as 50% of the taxes owing. It is unclear whether these penalties would still be applied under the limited program.

The introduction of the limited program eliminates almost all incentive for taxpayers who would fall within that category to voluntarily come forward through the VDP. On a basic level, the lack of penalty and interest relief provides a strong disincentive to doing so. However, it is also our position that CRA choosing not to assess gross negligence penalties and choosing not to prosecute criminally is not much of a boon to taxpayers whose conduct would relegate them to the limited program. Criminal prosecution by CRA, although possible in many instances, is rare. The latest statistics available show only 128 prosecutions in total for the 2013 calendar year. Many of those prosecutions related to tax protestors.

Our experience is that it is CRA's overwhelming favoured course of action to assess gross negligence penalties to taxpayers under subsection 163(2) of the Act almost as a matter of course and without regard to the judicially established tests for doing so. While gross negligence penalties are completely within the discretion of the Minister, the Tax Court of Canada and Federal Court of Appeal have repeatedly held that CRA faces an extremely high bar in order to justify their imposition in a given case. For these reasons, gross negligence penalties represent a ready form of settlement in tax litigation, both at the CRA appeals stage and further on at the Tax Court of Canada. When a client attends at our office after having been issued an assessment for additional taxes owing and associated gross negligence penalties, we are frequently extremely confident that we can have the gross negligence penalties removed. While there are of course cases where gross negligence penalties are warranted and supportable, in our experience successful final imposition of those penalties is not as common as gross statistics might suggest.

The extremely high burden faced by CRA for the justification of gross negligence penalties, combined with the fact that CRA rarely proceeds with criminal charges, means that a taxpayer whose non-compliance would fall under the limited program may not have *any* incentive for coming forward through the VDP at all. Such a person might well decide to hold tight and see if CRA ever catches on. If they decide not to come forward and CRA assesses gross negligence penalties, a skilled tax practitioner can frequently have the gross negligence penalties removed. Additionally, if the non-compliance is related to an honest error or omission, the CRA may even be precluded from reassessing a taxpayer at all if the matter were to proceed to the Tax Court of Canada; our firm also has extensive experience in challenging CRA reassessments on this point and for our clients we are always prepared to challenge audit and enforcement action. It should be obvious that the uncertainty in these scenarios applies to both parties, the CRA and the taxpayer, and the odds for extremely expensive litigation to replace a *bona fide* attempt to correct a taxpayer's affairs becomes immeasurably higher.

Client Cases and Effect of Proposed Changes to the VDP

Below, we have provided some factual scenarios that closely resemble those of both present and past clients. For discussion purposes, we will analyze how these scenarios would play out under the current VDP regime and also speculate how they would be affected by the proposed changes to the VDP.

Multiple Years of Unfiled Returns

The "chronic non-filer" contacts our office on a weekly basis in order to obtain advice on how to get up-to-date with their income tax filings. There is rarely any particularly blameworthy reason as to why such a person does not file the returns, nor is such a person usually a sophisticated taxpayer. Often, a return is not filed one year for one reason or another and, before the taxpayer knows it, next April is upon them and they miss another deadline. The unfiled returns pile up, cause the taxpayer to panic and, in many cases, become a mental hurdle that the taxpayer simply cannot bring themselves to deal with without professional help. A common thread for all non-filers is that they do not know how to deal with the several years of unfiled returns. The issues and anxiety surrounding this often spill-over into a taxpayer's personal life as well.

If someone with several years of unfiled returns came to our office, our firm's advice would depend on their sources of income. If the non-filer is a T4 employee with all taxes withheld at source by their employer and no additional sources of income, our firm often points such a person in the direction of a good accountant and tells them to file the returns. However, if the non-filer owned a business and/or had other taxable sources of income that should have been reported on the unfiled returns, under the current VDP rules in place our firm would without a doubt advise the non-filer to retain our firm to file a voluntary disclosure with CRA. If they had ten years of unfiled returns with an estimated gross tax liability of $50,000, full penalty and partial interest relief under the VDP would probably result in a total liability of somewhere in the neighbourhood of $60,000. If they are unable to pay the balance owing in full right away, they would enter into a payment arrangement with CRA to pay the balance owing over a reasonable timeframe.

On review of the proposed changes to the VDP in IC00-1R6, it is extremely unclear how taxpayers with multiple years of unfiled income tax returns would be dealt with. While paragraph 19 of IC00-1R6 states that relief under the general program will be considered if a taxpayer has "failed to file information returns", paragraph 20 of IC00-1R6 notes that "multiple years of non-compliance" will only be eligible for relief under the more onerous limited program, which only offers protection from criminal prosecution and gross negligence penalties. Failing to file a return is the prototypical example of non-compliance. How many years of unfiled returns represents multiple years of non-compliance? Three? Five? Ten or more? As described above, our experience is that most chronic non-filers do not fail to file returns for any nefarious reason: they simply fall into a pattern of non-filing that becomes very difficult to deal with in the absence of professional advice. We see no reason why such a person should not be entitled to full penalty relief and partial interest relief in exchange for getting their filings in order. Using our above example, if a taxpayer with ten years of unfiled returns and an estimated tax liability of $50,000 is only eligible for relief under the limited program, the imposition of late-filing penalties and full interest likely push the total liability in excess of $100,000. In addition, paragraph 26 of IC00-1R6 makes payment of the estimated taxes owing, or the furnishing of adequate security in lieu of payment, a condition of every voluntary disclosure. Therefore, if such a taxpayer cannot afford to pay the $100,000 all at once or provide adequate security to CRA, they may not be eligible for the VDP, whether through the general or limited program. If a taxpayer were to come into our office with ten years of unfiled returns, an associated tax liability and an inability to pay the estimated tax liability with their disclosure, we might very well advise such a taxpayer to do nothing and wait for CRA to potentially assess them and then consider insolvency options.

Non-Compliance Related to Offshore Assets

Our firm files voluntary disclosures for individual taxpayers with unreported offshore assets and income on a weekly basis. In the majority of these cases, the taxpayer is either someone who immigrated to Canada and left a large bank account overseas, without understanding of foreign asset and income reporting requirements, or he or she has inherited a foreign bank accountant from a deceased parent and was completely unaware of how to handle the situation. In most of these cases, the taxpayer has little to no documentation relating to the foreign asset, usually a bank or investment account, and has not actively managed the account. There are of course a non trivial percentage of clients who set up offshore accounts for various reasons. While some of those reasons are not tax related, there is a significant minority of cases where tax evasion was the motivation.

When a client with offshore income or accounts attends at our firm, we always advise them to file a no-name voluntary disclosure on a priority basis. In the no-name disclosure, we provide a completely transparent summation of all possible examples of non compliance, including failures to file Form T1135, failures to report foreign income and any other potential income inclusions. We also state that we will be requesting all available account information from the foreign financial institution, which is inevitably only available for the previous seven to ten years. On this basis, we request that the VDP limit the disclosure to whatever timeframe we can obtain records for, usually seven to ten years. In situations involving unreported offshore assets, we utilize no-name disclosures because the taxpayer is often not yet in a position to prepare and file

the requisite filings, usually because they have little to no information available for the account. By filing a no-name disclosure, we can start the process, achieve protection under the VDP and proceed to request all account information from the foreign financial institution. A common scenario is a client who has failed to report their ownership of, and income earned from, a Swiss bank account containing say $2,000,000 for ten years. Such a client might have a tax liability of $200,000 stemming from the unreported income and capital gains. Under the current VDP rules, with full penalty relief and partial interest relief, this client would likely have a total amount owing of approximately $300,000. Needless to say there is a complete ability to pay this amount, and taxes plus reduced interest will be paid in full.

Paragraph 20 of IC00-1R6 states that disclosures that are made subsequent to an official CRA statement regarding an intended tax compliance campaign are only eligible for relief under the limited program. For the past several years, CRA has publicly stated its intentions to crack down on offshore tax havens. These factors suggest that voluntary disclosures relating to offshore assets and unreported income related thereto will only be eligible for relief under the limited program. In our above example of a client who has not reported an offshore account and related income for ten years, the effects of only being available for relief under the limited program would be stark. Without interest and penalty relief, including penalties on unreported income and the annual $2,500 failure to file a T1135 penalty, the liability of such a client could double to $600,000 or more. Such a client will often not be so inclined to come forward through the program as the financial incentives for doing so are greatly reduced. In fact, they might be better off leaving the country in lieu of voluntarily reporting the non-compliance to CRA, a choice that some of our clients currently make as indicated above.

Another factor that will seriously reduce the incentive for these taxpayers to come forward through the VDP is paragraph 48 of IC00-1R6 which, in our firm's opinion, will effectively destroy the concept of no-name voluntary disclosures. Under the current VDP rules the "effective date of disclosure", the date from which a taxpayer will be afforded protection under the VDP, is the earlier of the following two dates:

- the date the CRA receives a completed and signed Form RC199, Voluntary Disclosures Program (VDP) 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.

Therefore it was possible to gain protection under the VDP by coming forward via a no-name voluntary disclosure application to CRA. Paragraph 48 of IC00-1R6 reads as follows:

- The EDD is the date the CRA receives a completed and signed Form RC199, Voluntary Disclosures Program (VDP) Taxpayer Agreement.

This change would mean that the only way to achieve protection under the VDP is to submit a voluntary disclosure on a named basis, which eliminates any ability for coming forward on a no-names basis. As discussed above, our firm frequently files no-name disclosures in situations where there are clear examples of non-compliance, but uncertainty with respect to the

availability of records makes it very difficult to determine the extent of the non-compliance. In fact, no-name voluntary disclosures represent approximately 75% of the disclosures that our office submits to CRA. There is no down side to the client in doing so, it allows any uncertainties to be resolved, and it provides a great level of comfort for nervous individuals. Once proper documentation is obtained and our firm is able to ascertain the extent of past non-compliance, the client inevitably agrees to release their identity and proceed with the disclosure. Over the years we have had a negligible number of clients decide not to proceed once the no-names disclosure is made.

Most, if not all, of our firm's clients with examples of non-compliance relating to offshore assets or income are extremely attracted to the no-name disclosure regime: it allows them to attain protection from penalties and prosecution under the VDP, while also providing a realistic timeframe in which they can request all documentation and prepare income tax filings. Under the proposed changes, a taxpayer could submit a no-name voluntary disclosure to CRA and, just before releasing their identity, be assessed and/or charged criminally by CRA, without any protection available under the VDP. In fact, it is possible that CRA will look to use potential identifying information provided by our firm in the initial no-name disclosure to achieve such a result. Paragraph 48 of IC00-1R6 removes the "teeth" from the no-name disclosure method and completely robs it of any and all of its current benefits. Most if not all potential clients that attend our firm would choose not to come forward voluntarily if they cannot do so on a no-names basis.

Additional Considerations

In addition to the above specific examples, there are additional proposed changes to the VDP contained in IC00-1R6 that our firm believes are ill-advised.

Denying Relief to Large Corporations

The fact that corporations with gross revenues in excess of $250 million in at least two of its last five taxation years are not eligible for *any* relief under the VDP, as proposed by paragraph 21 of proposed IC00-1R6, makes little sense and does nothing to encourage coming forward to report past non-compliance. Corporations with high gross revenue figures encounter extremely complex tax issues and inevitably rely on skilled professional advisors to provide advice on their tax affairs. As a result, any mistakes in their reporting are likely the result of incorrect, yet nevertheless *bona fide* advice from their advisors. Is it right to entirely cut off such corporations from penalty and interest relief under the VDP for merely following the advice of their advisors, who themselves are giving advice on complicated tax issues? As we discussed above, in these situations our firm would recommend disputing any normal audit reassessment as being out of time should the CRA identify the issues after the three year statute bar, all the way through to the Tax Court of Canada if necessary.

Non-compliance by Corporations with high gross revenue figures necessarily have the potential to result in relatively large penalty and interest amounts owing that can easily reach nine figures. These same corporations have dozens and potentially hundreds of tax paying employees. The VDP should be giving full relief to large corporations who employ hundreds of people, not denying relief entirely in order to make some sort of example of them. This is especially the case

because filing mistakes made by large corporations are in all likelihood technically and nature and almost invariably do not involve any blameworthy conduct.

Large Dollar Amounts Ineligible for General Program

Under paragraph 20 of IC00-1R6, disclosures involving "large dollar amounts" are only eligible for relief under the proposed limited program of the VDP. It is very unclear what would constitute a "large dollar amount" in the context of a voluntary disclosure. Nor is it clear how the dollar figure has anything to do with the stated goals of the VDP. As discussed above, our firm's understanding of the VDP is that its main goal is to encourage compliance with tax obligations, regardless of the source or level of non-compliance. Is there no longer the same desire to encourage compliance by wealthy taxpayers? Compared to some of the factors included in paragraph 20 of IC00-1R6, which suggest a desire on CRA's part to limit relief available to taxpayers who have engaged in blameworthy conduct such as "active efforts to avoid detection through the use of offshore vehicles or other means" or circumstances that involve a "high degree of taxpayer culpability contributed to the failure to comply", the size of a bank account is fairly arbitrary and is not at all a symbol of blameworthy conduct, unless wealth in and of itself is blameworthy and not worthy of relief. In addition, large dollar amounts result in larger tax liabilities, which directly result in more penalty and interest being applied. If the large dollar figure is not otherwise tied to blameworthy conduct, why would such a situation not be eligible for relief under the general program? The uncertainty inherent in determining what exactly is a "large dollar amount", combined with the minimal amount of relief available to such disclosures, will have the effect of discouraging taxpayers from coming forward through the VDP.

Payment of Taxes Owing Upfront

Under the proposed changes the VDP creates a new condition of acceptance – the taxpayer will now be required to estimate and pay its taxes upfront as a condition of acceptance. In the alternative, the taxpayer may be able to negotiate with the collections division to provide "adequate security" for the estimated debt.

This change is again a major cause for concern for our firm – many of our clients come to us having had years of non-reporting or incorrect reporting. They run businesses and cash flow is a constant concern. A typical client in these scenarios would be automatically excluded from VDP relief on the basis that they do not have the funds immediately available. In these circumstances, it would be difficult for us to advise a client to come forward voluntarily as there would be no upside to doing so – proceeding to disclose adverse information in exchange for no penalty relief and possible criminal prosecution means that those who cannot afford it have been effectively locked out of the program. This seems counter-intuitive to the government's stated goal of making the tax system more equitable for all taxpayers.

In addition, many of our other clients utilize the program in order to eliminate interest and penalties in the hopes of lowering their overall debt to CRA with a view to an insolvency proceeding once all the returns have been assessed. In some scenarios we are able to bring our clients' debts down into the consumer proposal territory which saves the client, CRA and the court system many thousands of dollars by avoiding bankruptcy. We submit that this strategy is

an acceptable one and should be lauded by those who wish to avoid waste and also to allow those who's tax debt is large to avoid having to claim bankruptcy on penalties that would otherwise not form a part of the government's revenue stream. This approach would also be precluded by the new requirement to pay taxes up front or make acceptable security arrangements since these clients invariably have no ability to provide any such security. We would note parenthetically that the Bankruptcy rules were changed some years ago to require a level of payments to CRA before a discharge from bankruptcy is available in the case of a large amount of taxes owing. So the policy concern of taxpayers with CRA debt going bankrupt has been addressed. Why is there a proposed carve out of these rules as regards the VDP?

GST/HST Proposal

The majority of our concerns related to the draft information circular can also be extended to the proposals contained in *GST/HST Memorandum 16.5- Voluntary Disclosures Program*. However, a brief review of some specific GST/HST proposals is warranted, in particular the rules about separating the different types of omissions into "tracks" which appear to be based on the concept of moral wrongdoing, rather than recognizing that GST/HST reporting is complicated at the best of times..

The breaking down of the various types of infractions into "tracks" which also dictates what type of relief a taxpayer will be eligible for creates a massive amount of confusion for taxpayers and the legal and accounting industries. Currently, a taxpayer is able to discern with the help of their advisors under what circumstances they will qualify for relief under the VDP when it comes to GST/HST issues. However, it appears that the Minister wishes to divide certain types of "wrong-doing" and will be making value judgements, without input from the taxpayer as to what constitutes relief which qualifies for anything more than the elimination of gross-negligence penalties.

We are aware of CRA's position that the GST/HST is considered a "trust fund", however we see no rational basis for disallowing relief from penalties for taxpayers who are attempting to make good on their obligations. As with the income tax side of the proposed changes, there is simply too much uncertainty involved and we anticipate years of litigation before it is made clear to all the involved parties what exactly constitutes a high degree of "culpability".

We also point out that allowing only wash transactions to qualify for full relief under "track 1" is of little use to most taxpayers – the penalties associated with these mistakes are often small and of little import to taxpayers. Our feeling is that the inclusion only of wash transactions in track 1 is simply to allow VDP to claim that it is still capable of offering the full discretion afforded to it by the taxpayer relief provisions without ever actually providing them. We feel that this is ungrounded "fettering" of the discretion of the Minister and will naturally be the subject matter of much judicial review in the future.

Conclusion

Our firm believes the proposed changes to the VDP contained in IC00-1R6 would have the effect of discouraging taxpayers from coming forward to report past non-compliance regarding their

tax obligations. Specifically, many of the incentives of coming forward will be significantly curtailed, if not eliminated, while the addition of many subjective determinations into IC00-1R6 introduce an unacceptable level of uncertainty with respect to how the program will be applied.

The division of the program into the general and limited programs is particularly troubling. Whereas the general program offers full relief as we have come to understand it under the current VDP regime, the limited program only offers relief as to gross negligence penalties and criminal prosecution, which offers very little incentive for coming forward voluntarily through the VDP. CRA proceeds with criminal charges only in rare instances and gross negligence penalties, if assessed, are tough for the Minister to justify and an experienced tax lawyer stands a good chance of getting such penalties removed.

While CRA may decide that such a division is warranted, we urge the Minister to base the delineation between the general and limited programs on principled factors, such as the degree of blameworthiness exhibited by a taxpayer in a given example of non-compliance, so taxpayers can ascertain in advance into what pool they are likely going to fall. In our firm's opinion, the proposed changes to the VDP fail to achieve any type of certainty or logical consistency with respect to how certain categories of non-compliance should be treated under the proposed changes to the VDP. There is nothing particularly nefarious about a taxpayer with multiple years of non-compliance, particularly if it the same issue is involved every year. Similarly, our experience is that taxpayers in possession of offshore assets rarely do so for wicked reasons: they either move to Canada and leave the assets offshore, or they inherit the asset from a deceased parent. In both these cases the taxpayer is simply completely oblivious to what can be complex foreign asset reporting obligations. The dollar amount of any particular example of non-compliance is often completely arbitrary and has nothing to do with the level of culpability exhibited by a given taxpayer's actions. Each of the above-noted situations would only be eligible for relief under the limited program, meaning full interest would apply and normal CRA penalties would be assessed. Given that it is our firm's experience that none of these situations ever involve malicious intent on the part of the taxpayer, denying them full relief under the general program is an untenable outcome that undermines the effectiveness of the VDP.

Changing the "effective date of disclosure", so that taxpayers only attain protection under the VDP once they have released their identities will result in the complete destruction of the "no-name" voluntary disclosure method. While the no-name disclosure method may somehow appear dishonest or not forthcoming on its face, that could not be further from the truth. our firm utilizes the no-name approach when we know there is non-compliance, but the extent of such non-compliance cannot be readily determined. The availability of the no-name voluntary disclosure, if anything, provides a level of protection to the client that makes them comfortable in authorizing or firm to provide an *entirely forthcoming and honest* rendition of all past examples of potential non-compliance. As noted above, 75% of voluntary disclosures our firm submits are no-name voluntary disclosures and in substantially all of those cases the client ends up revealing their identity to CRA and completing the process. The ability to come forth and attain protection under the VDP when not all facts are known strikes an important balance with our clients and makes the VDP extremely attractive. The elimination of the no-name voluntary disclosure will likely result in all of these clients deciding not to come forward through the VDP.

Adding payment of estimated taxes owing as a condition of a valid voluntary disclosure just seems wrong for a program that is geared towards encouraging taxpayers to get compliant with their reporting obligations under the Act. This condition makes relief under the VDP contingent on the ability to pay the taxes owing immediately, or the ability to provide adequate security to CRA, most likely in the form of a lien on their property. If a taxpayer cannot afford to pay the taxes owing all at once and likewise does not own real property, they may very well be ineligible for the VDP. While many of the proposed changes to the VDP in IC00-1R6 appear to be targeted at the wealthy, this condition is a direct attack on the poor. Most of our clients come in to our office completely distraught with their tax situation and are willing to pay for the rest of their lives in order to achieve peace of mind. We believe such a client should be entitled to full penalty and interest relief under the VDP, but under the proposed changes, they would not be entitled to any relief whatsoever.

Cutting off large corporations from relief under the VDP is yet another proposed change contained in IC00-1R6 that is entirely unprincipled and based upon an arbitrary figure, in this case gross income in excess of $250 million in two of the past five taxation years. Most non-compliance of such corporations is going to occur as a result of advice given by their tax advisors, on whom these corporations completely rely to help the corporation steer through very strict and complicated Canadian tax obligations. To cut off large corporations from relief under the VDP completely ignores this fact. It also fails to recognize that large corporations employ hundreds of Canadian taxpayers, which should entitle them to relief: relief given under the VDP to such a corporation could pay the salaries of a whole branch for a year. This proposed change is one of many that is less concerned with encouraging compliance than it is with generating tax revenue.

For all of the foregoing reasons, we believe the proposed changes to the VDP contained in IC00-1R6 will undermine the VDP and remove most of the incentives for taxpayers to voluntarily come forward through the program. The current regime rewards *all* taxpayers equally for coming forward to report past non-compliance and the proposed changes lose sight of this in lieu of a focus on arbitrary considerations, as well as an apparent focus on generating higher tax bills.

The complexity and uncertainty introduced by these proposed changes, if put into force, would no doubt create lots of work and additional revenue for tax practitioners. We also foresee years worth of litigation in the Federal Court of Canada before the rules are clarified as more than twenty years of jurisprudence surrounding the program will be of no further value.

However, the potential influx of billable work does not change our opinion that the proposed changes introduce ill-advised amendments to a program that is not broken and therefore does not need fixing.

We look forward to corresponding further with the Minister to discuss the future of the VDP.

Yours Very Truly,

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